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Friday
March 20, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, and Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404–331–2170.

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

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Presidential Documents

Title 3—

The President

Executive Order 12588 of March 18, 1987

Action Against Certain Assets of Disputed Title

By the authority vested in me as President by the Constitution and laws of the United States, including section 204 of the Special Foreign Assistance Act of 1986 (Public Law 99–529) and section 301 of Title 3 of the United States Code, and for the limited purpose of preserving the status quo pending a judicial resolution of the proceedings that have been or may be instituted by the Government of Haiti in its efforts to recover assets allegedly stolen by its former President, Jean Claude Duvalier, and his associates, and without expressing any opinion as to the merits of any claim or defense in any judicial proceeding, it is hereby ordered as follows:

Section 1. The acquisition, transfer (including transfer on the books of any issuer, holder, or depositary), payment, disposition, transportation, exportation, or withdrawal of, or the recording of interest in or ownership of, or any deed of title, mortgage, or other evidence of ownership or title regarding or dealing in, any real or personal property, of any kind whatsoever, located in the United States and described in Section 2 of this Order is prohibited unless expressly authorized by the Secretary of the Treasury under such terms and conditions as he may prescribe.

Sec. 2. Property will be considered to fall within the scope of this Order and to be subject to the prohibition contained in Section 1 when:

(a) The Government of Haiti certifies, in writing with appropriate documentation, to the Secretary of the Treasury that:

(1) it has initiated litigation in the Federal or State courts of the United States alleging that the Government of Haiti or its instrumentalities should be awarded title to, custody of, or possession of, the property;

(2) it has evidence reasonably to believe that such property currently is held or possessed by or in the name of Jean Claude Duvalier or other individuals associated with the Duvalier regime, or a taker from Jean Claude Duvalier or his associates;

(3) it has petitioned the court to attach or otherwise restrain the property and has reason to believe that the court would grant such petition were the Government of Haiti to post adequate bond; and

(4) it is unable, without outside assistance, to post the necessary security because of lack of assets;

(b) The Department of Treasury gives notice to the holder of the property that such property falls within the scope of this Order and, in consultation with the Departments of State and Justice, has not determined that an insufficient basis exists for the certification by the Government of Haiti; and

(c) The court which the Government of Haiti has petitioned to attach or otherwise restrain the property has not denied such petition on grounds other than the failure of the Government of Haiti to post adequate bond.

Sec. 3. Upon the entry of final judgment and after exhaustion of any appeals that might be taken, as well as satisfaction of any judgment, in any action in which the property described in Section 2 was sought, the property shall no longer be subject to the prohibition contained in Section 1 of this Order.

Sec. 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this Order.

Sec. 5. This Order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sec. 6. This Order is effective immediately.

Ronald Reagan

THE WHITE HOUSE,
March 18, 1987.

[FR Doc. 87-6235
Filed 3-18-87; 4:56 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12589 of March 18, 1987

Transfer of Annual and Sick Leave of Federal Employees

By the authority vested in me as President by the Constitution and laws of the United States of America, including Title VII, Section 701(d) of the Act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1987, and for other purposes, as contained in Section 101(m) of Public Laws 99–500 and 99–591, and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. The Director of the Office of Personnel Management is hereby delegated authority to prepare and submit to the Congress a report concerning the desirability, feasibility, and cost, if any, of permitting Federal employees voluntarily to donate annual and sick leave for the use of other Federal employees who need such leave for medical or family emergency or other hardship situations.

Sec. 2. The authority of the President to prescribe regulations under Section 701(d)(1) of Public Law 99–500 and Section 701(d)(1) of Public Law 99–591, governing a temporary program for the transfer of unused accrued leave in not more than three cases, is hereby delegated to the Director of the Office of Personnel Management.

Ronald Reagan

THE WHITE HOUSE,
March 18, 1987.

[FR Doc. 87–6236
Filed 3–18–87; 4:57 pm]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 87-003]

Sharwil Avocados From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Hawaiian Fruits and Vegetables regulations to allow Sharwil avocados to be moved pursuant to a limited permit from Hawaii to Alaska based on compliance with provisions designed to ensure that the avocados are distributed in the United States only in Alaska. It is necessary to regulate the interstate movement of avocados from Hawaii because of the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly. The Department has determined that Sharwil avocados moved to Alaska from Hawaii under the harvesting and handling provisions required by this rule will not present a significant risk of causing the spread of such fruit flies.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION CONTACT: Larry H. Tengan, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations (contained in 7 CFR 318.13 *et seq.* and referred to below as the regulations), among other things, regulate the interstate movement from Hawaii of avocados in a raw or unprocessed state. It is necessary to regulate the interstate movement from Hawaii of avocados because of infestations in Hawaii of the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)); the melon fly (*Dacus cucurbitae* (Coq.)); and the oriental fruit fly (*Dacus dorsalis* (Hendel)). These fruit flies are commonly referred to as "Trifly."

A document published in the **Federal Register** on December 11, 1986 (51 FR 44746-44751), proposed to add a new § 318.13-4g to the regulations to allow Sharwil avocados to be moved pursuant to a limited permit from Hawaii to Alaska based on compliance with certain harvesting and handling provisions and with provisions designed to ensure that the Sharwil avocados are distributed in the United States only in Alaska. We also proposed to add provisions prohibiting the interstate movement from Alaska of such Sharwil avocados.

The Department's rationale for allowing Sharwil avocados to be moved interstate to Alaska under the harvesting and handling provisions that were set forth in December 11 proposal was that Sharwil avocados picked directly from trees (they had not fallen to the ground) and that have an attached stem are not a host of Trifly for at least 24 hours after having been picked. Furthermore, the harvesting and handling provisions that must be followed in Hawaii by Sharwil avocado packers ensure that such avocados are not attacked by Trifly prior to interstate movement to Alaska.

The harvesting and handling provisions, coupled with the fact that Trifly cannot become established in Alaska, in addition to the provisions to ensure that the avocados are distributed in the United States only in Alaska, would be adequate to assure that Sharwil avocados would not present a significant risk of causing an infestation of Trifly in the United States.

We solicited comments on the proposal for 30 days, ending January 12, 1987, and received two comments. We have carefully considered the comments submitted in response to the proposal, and discuss below the issues raised by the comment opposed to the proposal. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal without change, as a final rule.

Comments

One commenter indicated that the interstate movement of Sharwil avocados to Alaska under the procedures specified in the proposal would not present an unreasonable risk to avocados grown in California, but that such procedures would not be adequate to guard against Trifly if Sharwil avocados were allowed to move to States other than Alaska. While the current action does only permit movement to Alaska, if experience in enforcing these procedures shows that this commenter's concerns are unfounded, we intend to propose rulemaking that would allow the movement of Sharwil avocados to the entire United States, subject to appropriate harvesting and handling provisions.

The second commenter was unequivocally opposed to the proposal, and presented the following three reasons why the Department should not allow Sharwil avocados to be moved interestate to Alaska: (1) All packing and surveillance should be performed under the supervision of a trained USDA inspector, rather than the facility's employees: (2) the regulations do not contain provisions for tracing the origin of infested shipments; and (3) there are no penalty provisions for those who violate the regulations.

The Department does not agree with the commenter, and finds that these reasons do not provide a basis for prohibiting the interstate movement of Sharwil avocados from Hawaii to Alaska.

It appears that the commenter misunderstood the certain aspects of the proposal. There were no provisions in the proposal that would have required that packing and surveillance be conducted under the supervision of the facility's employees. It was proposed that the facility's employees inspect the Sharwil avocados to ensure that the avocados have a stem length of at least 0.5 centimeters, and to discard those avocados that do not have the proper stem length. The culling of avocados which do not have the proper stem can adequately be performed by the employees of the facility. Such activities along with other handling provisions will be monitored by inspectors.

Furthermore, the final rule contains specific provisions to ensure that inspectors will be available to monitor compliance with the harvesting and handling provisions. In § 318.13–4g(f) of the final rule it is required that all activities relating to the harvesting and handling of Sharwil avocados be performed only during times that have been previously approved in writing by the Plant Protection and Quarantine officer-in-charge. The purpose of this provision is to ensure that inspectors will be present to conduct monitoring of the harvesting and handling operations.

The commenter's second objection was that the proposal did not contain provisions for tracing the origin of any infested shipments. USDA does not believe it is necessary to include specific traceability provisions in the regulations. Each packer will have his or her own unique label on its cartons and will enable USDA to trace back to the packer of any infested shipments.

Concerning the penalty provisions for those who may violate the regulations, USDA's authority to impose criminal or civil penalties for persons violating the regulations promulgated under the Federal Plant Pest and Plant Quarantine Acts is found in Title 7 of the United States Code, sections 150gg and 163, respectively. USDA does not usually specify in its regulations the specific criminal or civil penalty provisions which may be charged for violating the regulations. It should be noted, however, that a person could be charged with a misdemeanor and imprisoned for up to 1 year and fined up to $5,000 or assessed a civil penalty up to $1,000 for violating the regulations pertaining to the interstate movement of Sharwil avocados from Hawaii to Alaska.

This document also makes nonsubstantive changes for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

During each growing season for more than the past decade, Sharwil avocados were allowed administratively to move from Hawaii to Alaska for general distribution in Alaska. During that time fewer than 100,000 Sharwil avocados moved annually from Hawaii to Alaska. There is no reason to believe that the number of Sharwil avocados moved from Hawaii to Alaska will be significantly different under the final rule. Further, it appears that the amount of avocados that will be moved interstate from Hawaii will constitute less than one percent of the total United States avocado production.

Under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V)

List of Subjects in 7 CFR Part 318

Agricultural commodities, Avocados, Hawaii, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

Accordingly, 7 CFR Part 318 is amended to read as follows:

1. The authority citation for 7 CFR Part 318 is revised to read as set forth below and the authority citations following all the sections in Part 318 are removed:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 318.13–1, paragraphs (i) and (l) are revised to read as follows:

§ 318.13–1 Definitions

* * * * *

(i) *Moved (move and movement).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved, directly or indirectly, from Hawaii into or through the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States (or from or into or through other places as specified in this subpart). Local intrastate movement is in no way affected by the regulations in this subpart. ("Move" and "movement" shall be construed accordingly.)

* * * * *

(l) *Compliance agreement.* Any agreement to comply with stipulated conditions as prescribed under § 318.13–3(b), § 318.13–4(b), or § 318.13–4(g) of this subpart, executed by any person to facilitate the interstate movement of regulated articles under this subpart.

* * * * *

3. In § 318.13–2, the text of paragraph (a) is redesignated as paragraph (a)(1) and a new paragraph (a)(2) is added to read as follows:

§ 318.13–2 Regulated articles.

(a) *Prohibited movement.* * * *

(2) Sharwil avocados which have been moved to Alaska pursuant to § 318.13–4 are prohibited movement from Alaska into or through other places in the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

* * * * *

4. In § 318.13–3, the text of paragraph (b) is redesignated as paragraph (b)(1) and a new paragraph (b)(2) is added to read as follows:

§ 318.13–3 Conditions of movement.

* * * * *

(b) *To restricted destinations.* * * *

(2) *Sharwil avocados for movement to Alaska.* Sharwil avocados may be moved interstate from Hawaii to Alaska if in a container clearly marked "To be distributed in the United States only in Alaska", and if accompanied by a limited permit issued in accordance with § 318.13–4(c).

* * * * *

5. In § 318.13–4, paragraph (c) is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 318.13–4 Conditions governing the issuance of certificates or limited permits.

* * * * *

(c) * * * Limited permits may be issued by an inspector for the movement of noncertified Sharwil avocados for movement from Hawaii to Alaska if the provisions of § 318.13–4g are met.

* * * * *

6. A new § 318.13–4g is added to read as follows:

§ 318.13–4g Administrative instructions specifying conditions for limited permits for Sharwil avocados for movement to Alaska based on certain harvesting and handling provisions.

Sharwil avocados will be eligible for a limited permit for movement from Hawaii to Alaska if the following conditions are met:

(a) The avocados have an attached stem which is at least 0.5 centimeter in length.

(b) The avocados were picked directly from trees (they had not fallen to the ground) determined by an inspector to be of the Sharwil variety (the location of the trees must be identified in a compliance agreement with the person having control of the picking operations), and were picked at a premises that the inspector determines does not produce any other avocados that are not readily distinguishable from Sharwil avocados.

(c) The avocados immediately after being picked were placed in containers containing only Sharwil avocados having an attached stem at least 0.5 centimeter in length, and had remained in such containers until taken into the packing facility referred to in paragraph (d) of this section.

(d) Within 12 hours after being picked, the avocados were moved into a packing facility in which operations are conducted in accordance with the following provisions at all times Sharwil avocados not meeting the conditions of paragraph (e) of this section are in the facility:

(1) The packing facility is maintained free of all Trifly host material (other than Sharwil avocados meeting the conditions of paragraph (e) of this section) and there is no Trifly host material within 100 feet of the packing facility (a list of Trifly host material shall be attached to a compliance agreement with the person having control of the packing operations, and is available from local offices of Plant Protection and Quarantine in Hawaii which are listed in telephone directories and from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, Maryland 20782);

(2) The packing facility is maintained free of Trifly;

(3) All doors and other openings to the packing facility are maintained under conditions determined by an inspector as adequate to prevent the entry of Trifly (this could be accomplished by such things as having each entry way equipped with self-closing double doors, and by covering the doors and other openings with screening 16 mesh or finer);

(4) Upon being moved into the packing facility all of the avocados are inspected by employees of the facility and all of the avocados found not to meet the conditions of paragraph (a) of this section are culled; and

(5) All culls from the avocados are removed at least daily from the premises where the packing facility is located.

(e) The following occurred at the packing facility referred to in paragraph (d) of this section within 24 hours after the avocados were picked: the avocados were packed in cartons determined by the Deputy Administrator to be impervious to Trifly; and the cartons were secured with tape to safeguard against opening and were clearly marked "To be distributed in the United States only in Alaska".

(f) All activities related to the harvesting and handling of the avocados (the picking of the avocados from identified trees, holding them prior to transportation to a packing facility, transporting them from the place where picked to the packing facility, and handling them in the packing facility) were conducted under the control of a person or persons operating in accordance with a valid compliance agreement between Plant Protection and Quarantine and such person or persons whereby it is agreed that all of such activities relating to the harvesting and handling of avocados for movement from Hawaii to Alaska under this section (1) will be subject to monitoring by inspectors, (2) will be conducted only during times previously approved in writing by the Plant Protection and Quarantine Officer-in-Charge (approval will be based on a determination concerning whether inspectors are available to conduct the necessary monitoring of such activities), and (3) will be conducted in compliance with the provisions of this section.

(g) There is in effect a valid compliance agreement between Plant Protection and Quarantine and the person requesting the issuance of the limited permit whereby it is agreed that from the time the limited permit is issued until the avocados are moved interstate from Hawaii all activities concerning the avocados shall be subject to monitoring by inspectors, and that the avocados will be moved interstate from Hawaii only if they continuously remain in the marked cartons referred to in paragraph (e) of this section, and only if the cartons remain intact and secured with tape.

(h) For purposes of this section, Trifly means the Mediterranean fruit fly, the melon fly, and the Oriental fruit fly.

7. Section 318.13–17 is revised to read as follows:

§ 318.13–17 Withdrawal of certificates, limited permits, or compliance agreements.

Any certificate, limited permit, or compliance agreement which has been issued or authorized may be withdrawn by an inspector orally or in writing, if such inspector determines that the holder thereof has not complied with all conditions under the regulations for the use of such document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate, limited permit, or compliance agreement has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Deputy Administrator.

Done in Washington, DC, this 17th day of March, 1987.

W.F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–6056 Filed 3–19–87; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Parts 925 and 944

Grapes Grown in a Designated Area of Southeastern California, and Table Grapes Imported Into the United States; Change in the Effective Dates for Domestic and Imported Table Grape Requirements for the 1987 Season and Each Season Thereafter

AGENCY: Agricultural Marking Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes April 20 through August 15 as the effective period of the California desert grape and imported table grape regulations for the 1987 season and for subsequent seasons. The purpose of these changes is to assure that applicable quality requirements are in

place during such time periods to provide a consistent supply of grapes of acceptable quality to fresh market outlets. The change in the effective date applicable to domestic desert grapes is based on a recommendation of the California Desert Grape Administrative Committee, which works with the Department in administering the Federal marketing order for California desert grapes. The change applicable to grapes offered for importation is necessary under § 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Effective Date: April 20, 1987. The applicable period for the domestic and imported table grape seasonal requirements is April 20 through August 15, 1987, and April 20 through August 15 each season thereafter.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Departmental Regulation 1512-1 and Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of the businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 22 handlers of California desert grapes subject to regulation under the marketing order handling regulation. There are approximately 88 growers of desert grapes in the production area. Finally, there are approximately 50 importers of table grapes who will be subject to the table grape import regulations during the 1987 season. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers, producers, and importers of table grapes may be classified as small entities.

The Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this action on small entities. The regulatory action in this instance is a final rule establishing an effective date earlier than May 1, the date currently established for the handling regulation applicable to California desert grapes and table grape imports. The handling regulation is applicable to table grapes grown in the production area and shipped to fresh market outlets. Pursuant to § 8e of the Act, whenever such a regulation is in effect for domestic shipments, imports are required to meet the same or comparable requirements.

In 1985, the California desert grape regulation was made effective on a continuous basis under the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of table grapes grown in a designated area of southeastern California. The effective period was May 1 through August 15 of each season. Effective on a continuous basis means that the requirements continue in effect during the period specified from marketing season to marketing season indefinitely unless changed. It was anticipated that making the regulation effective on a continuous basis gives the domestic shippers and importers a better opportunity to integrate the program requirements into their business operations by facilitating advance planning. The marketing agreement and order are effective under the Act. The California Desert Grape Administrative Committee, established under the order, locally administers the marketing order program.

Grapes grown in the production area are marketed in the major market areas of the United States. Shipments of California desert grapes totaled 8,189,994 million lugs (22 pound equivalent) in 1986. This compared to 7,491,346 million lugs in 1985 and the three-year (1983-1985) average of 6,899,377 million lugs. Since 1982, bearing acreage of California desert grapes has increased moderately. Bearing acreage was reported at 18,073 acres in 1986, more than the 15,994 acres reported in 1985.

The increase in the level of fresh shipments in recent years is primarily attributed to improved production and packaging practices, improved product quality, and increased per acre yields. There are about 807 non-bearing acres of desert grapes which are expected to be productive within the next several years. Hence, production of desert grapes is expected to increase moderately in the near future. The three major varieties of desert grapes are Perlette, Thompson Seedless, and Flame Seedless. These three varieties accounted for about 92 percent of the shipments in 1986.

For 1986, the production area accounted for about 12 percent of total California fresh shipments. However, during the period May to July, fresh shipments from this area constituted about 65 percent of the early season U.S. supply of fresh grapes. Hence, these shipments help set the market tone for the rest of California's fresh table grape shipments.

For the last three years, initial shipments of grapes from the production area began in late April or early May. Normally, prices for grapes are relatively high at the beginning of the season, but decline rapidly as the season progresses, because of increased supplies of grapes.

The desert grape industry has utilized the marketing order authority to assure buyers of a consistent supply of uniformly graded and packed good quality grapes. This has helped the industry achieve the wide distribution necessary to dispose of the crop at reasonable returns to growers.

In view of the prospective increase in production which will have to be absorbed by the market, it is important that demand not be adversely affected by the marketing of poor quality grapes. Shipments of such grapes tend to depress prices, demoralize the market, and reduce grower returns. The quality requirements established under the program have been used to assure the consumer that the grapes offered in the market are of safisfactory quality. The marketing of grapes of low quality—lacking in flavor, small size, and off-color—would tend to destroy the reputation of the fruit with consumers, wholesalers, retailers, and others at all levels in the marketing channel.

Chile is the leading exporter of grapes to the United States. Thompson Seedless, Perlettes, the Flame Seedless are the important varieties exported. The volume of imports from Chile has been increasing. Last season, a record setting 22 to 23 million 18 pound boxes of Chilean grapes arrived in the United States. Shipments from Chile over the last 10 years have increased to about 27 percent of the U.S. market. A recent study by Dr. Paul Aldunate Valdes, professor of Agricultural Economics at the Pontifical Chilean Catholic University, highlights the explosive growth of new grape plantings in Chile.

Imports of Chilean table grapes have increased in recent years, and additional increases are expected in the future years.

The California and import table grape regulations require table grapes to meet the minimum grade and size requirements of U.S. No. 1 Table grade as specified in the United States Standards for Grades of Table Grapes (European or Vinifera Types), 7 CFR 51.880 through 51.912, except that grapes of the Flame Seedless variety are required to meet the "other varieties" standard for berry size (ten-sixteenths of an inch). In addition, fresh table grapes (domestic and imported) are required to meet the minimum maturity requirements for table grapes as specified in the California Administrative Code, except that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties are exempt from domestic and import handling requirements because they are not grown in the desert area of California.

While the regulation will establish earlier effective dates for domestic and imported table grape regulations, total exemptions from requirements under the domestic handling regulation remain unchanged for shipments of the Emperor, Calmeria, Almeria, and Ribier grape varieties. Imports of these varieties of grapes also are exempt from import regulation requirements (§ 944.503, Table Grape Import Regulation 4; 51 FR 12498; April 9, 1986).

Limited exemptions are provided for organically grown grapes and grape by-products under the marketing order. The exemptions are specified in § 925.304 (c) and (d) (51 FR 12498; April 9, 1986). Organically grown grapes (defined to mean grapes which have been grown for market as natural grapes by performing all the natural cultural practices, but not using any inorganic fertilizers or agricultural chemicals including insecticides, herbicides, and growth regulators, except sulphur) need not meet the minimum individual berry size requirements if certain conditions and safeguards are met: (1) The handler of such grapes has registered and certified with the committee on a date specified by the committee, the locatior of the vineyard, the acreage and variety of grapes, and such other information as may be needed by the committee to carry out these provisions; (2) each container of organically grown grapes bears the words "organically grown" on one outside end of the container in plain letters in addition to requirements specified under paragraph (b)(3) of the handling regulation.

The handling of grapes for processing (raisins, crushing, and other by-products) is exempt from requirements specified in paragraphs (a), (b), and (c) of § 925.304 if the committee determines that the person handling such grapes has secured the appropriate permit or order form from the County Agricultural Commissioner, and the by-product plant or packing plant to which the grapes are shipped has adequate facilities for commercial processing, grading, packing, or manufacturing of by-products for resale.

In addition, pursuant to section 8e of the Act, only grade, size, quality, and maturity requirements apply to imported grapes, and only when the domestic handling regulation is in effect. The weight, pack, and container requirements of the handling regulation are not applicable to imported grapes.

It is the Department's view that the impact of this regulation will be advantageous to growers, handlers, and importers. The known costs to handlers, growers, and importers of earlier implementation of the regulations would be significantly offset when compared to potential benefits of the regulation in improving table grape quality in the marketplace. Shipments of low quality grapes to the fresh market depress prices and discourage repeat purchases by consumers. The quality assurances contemplated by this action are expected to assure buyers of a consistent supply of good quality grapes, provide stable marketing conditions, improve returns to producers, and promote consumer satisfaction, all of which will benefit growers, handlers, and importers of table grapes.

The California Desert Grape Administrative Committee, hereinafter referred to as CDGAC, met November 20, 1986, and recommended to the Secretary its marketing policy for 1987 and the seasonal marketing regulations for the 1987 season. This was done pursuant to § 925.50. That section requires the committee each season prior to making any recommendation for regulation pursuant to § 925.51 to submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report is required to contain information relative to:

(a) The estimated total shipments of grapes produced within the production area;

(b) The expected general quality of the grapes in the production area;

(c) The expected demand conditions for grapes;

(d) The probable prices for grapes;

(e) Surpluses of competing commodities, including foreign produced grapes;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of grapes; and

(h) The type of regulations expected to be recommended during the marketing season.

At the meeting, these issues as well as the effective date for the minimum quality requirements were discussed. The committee was concerned that effective date changes made last season for domestic grapes and the corresponding changes required in the import regulation pursuant to § 8e of the Act caused marketing problems for foreign growers. In 1986, the domestic regulation initially went into effect on April 15 and the import regulation was effective April 15 for all imports except for those arriving by ocean transport for which the effective date was April 19. The dates were subsequently delayed because the domestic shipping season started later than expected. The new domestic effective date for 1986 was April 22 and that for the import regulation was April 26. The committee believes that the establishment of an earlier effective date would be in the best interests of the domestic and foreign growers. The committee received information from Mr. Frederick L. Jensen, Extension Viticulturalist, University of California, concerning the difficulty of accurately predicting a harvest date for the California desert grape crop in January of each year.

The current May 1 effective date of the domestic desert grape handling regulation was previously thought to coincide with the approximate beginning date of shipments of desert grapes each year. However, since it was adopted desert grapes matured and were shipped earlier at least one season suggesting that the May 1 date is actually too late in the marketing season to cover early grapes every season. The recommendation for an earlier effective date recognizes the industry's concern about shipment of immature grapes early in the season. Early season grape shipments command premium prices. Hence, there is a strong incentive to ship grapes before they are ready for market. Shipments of immature grapes result in consumer dissatisfaction and lower returns to producers. The committee believes that an earlier effective date

would deter shipments of immature grapes out of the production area from entering fresh market channels before they have developed full flavor. In addition, regulation of imports of table grapes is required pursuant to Section 8e of the Agricultural Marketing Agreement Act of 1937 whenever such imports are in competition with grapes subject to the marketing order regulation. In view of the above, the committee recommended that the 1987 domestic season regulations for table grapes become effective on April 10, 1987, and each season thereafter rather than May 1 as currently provided in the continuing regulation.

Notice of the establishment of an April 10 effective date for California desert and imported table grapes was contained in a proposed rule published in the **Federal Register** on January 6, 1987 (52 FR 432). Interested persons were provided 30 days to express written support or opposition to this proposal. A total of 106 comments were filed. The CDGAC filed a comment supporting its recommendation. Sixty-one other comments from California desert grape growers, handlers, consumers, and congressional members also supported the CDGAC's efforts to improve the quality of table grapes entering fresh market channels. Forty-four comments from importers primarily from the eastern part of the United States, the Chilean Exporters Association, the Chilean Embassy, several congressional members, and other interested parties objected to the proposal.

Comments supporting the proposed earlier effective date for the domestic and import table grape regulations contend that it is necessary in order to prevent table grapes of lower quality from being distributed in fresh market channels and that this action would improve the overall quality of domestic and imported table grape shipments. Commenters advanced the point that the domestic grape industry has sought to expand sales of grapes by maintaining consistent product quality in the marketplace. These commenters further contended that Chilean grapes imported during the months of March and April when § 8e import requirements are not in effect, are placed in cold storage and then released for sale in May and June in competition with domestically grown table grapes which must meet quality requirements under the marketing order. It was indicated that this practice has tended to destabilize the early season grape market because many of the grapes were of marginal condition (i.e. significant amounts of decay, shattered berries, and discoloration). A detailed discussion of these contentions is included later in this final rule.

Comments received from importers of Chilean grapes, the Chilean Embassy, the Chilean Exporters Association, and counsel representing these and other interested parties opposing the proposal indicated that implementing earlier effective dates for the domestic and imported table grape regulations were: (1) Unnecessary because historically, actual shipments of domestically produced table grapes do not begin until mid to late May; (2) unnecessary because there is no evidentiary support that Chilean importers put grapes into cold storage arriving in March and April and release them for sale in May or June when the domestic regulations are in effect; and (3) the AMS study of table grape imports arriving from Chile during the period April 1985 through May 1, 1985, is inaccurate.

In support of the committee's contention concerning the quality of early season domestic table grapes the committee submitted the following information. The CDGAC contends that its recommendation for an earlier effective date will consistently provide fresh market outlets and consumers with a better quality product. A product that is more desirable and appealing to the consumer will provide greater economic returns to domestic and foreign grape producers. The CDGAC indicated that fresh grapes marketed in the beginning of the domestic fruit season are seen by many retailers as an ideal promotional item with which to begin the summer season and thus command premium prices. Consequently, great demand is placed on the producer to make volumes of fruit shipments available prematurely. According to the CDGAC, the temptation is overwhelming to sell grapes at the beginning of the domestic season, whether they meet minimum standards or not.

Shipments of immature grapes result in consumer dissatisfaction and lower returns to producers. The CDGAC believes that one benefit of an earlier effective date is that it will deter shipments of low quality and immature grapes from entering fresh market channels before they have developed full flavor. The CDGAC also indicated that a later effective date for the domestic and import table grape shipments would permit low-quality, immature grapes in fresh market channels which would not promote stable marketing and effectuate the declared policy of the Act. The CDGAC further addressed the use of cold storage wherein grapes can be placed and held for several months. According to it, increasingly, Chilean grapes are being imported and placed in cold storage during the months of March and April, and then released for sale in May and June.

To substantiate this contention, the CDGAC submitted a survey conducted by a private research firm and the College of Business and Management at the University of Maryland titled *A Survey of Table Grape Storage Behavior in 1986*. This survey concluded that importers or handlers of imported grapes have used their storage capability extensively in the March-April time frame when section 8e import regulations are not in effect.

In its comments, the Embassy of Chile stated that any change in the current May 1 effective date would be in conflict with GATT because only Chilean grapes would be in U.S. markets in April. Thus, the change in the effective date would be a non-tariff trade barrier. Moreover, the only noticeable effect of such a change would be a greater interruption in the normal supply of table grapes with the obvious consequence of increasing the already high prices for the initial California shipments.

In addition, the Chilean Exporters Association (CEA) contended that GATT prohibits any Federal agency from engaging in any standards related activity which creates any unnecessary obstacles to the foreign commerce of the United States. Thus, the CEA argues that the GATT requires nondiscriminatory treatment for any imported product, including the acceptance of the product for testing in comparable situations and the administration of tests in comparable situations. On that basis, CEA concludes that the Department may not make the marketing order effective when no domestic grapes are available in the market. Also the CEA contended that the Department could not apply point of shipment standards to imported grapes at the point of delivery. However, contrary to the CEA's contention, shipments of domestic grapes may begin earlier than May 1. For example, 1986 shipments commenced on April 28. The handling regulation would be applicable to table grapes grown in the production area and shipped to fresh market outlets. Pursuant to § 8e of the Act, whenever such a regulation is in effect for domestic shipments, imports are required to meet the same or comparable requirements. With shipments of domestic grapes beginning

in April the regulation of imports is required by section 8e.

With respect to CEA's contention that the application of shipping point tolerances to imported grapes violates GATT, it should be noted that the intent of the standard is to insure shipments of quality grapes. Although there is superficial appeal to CEA's arguments, the commenter loses sight of the purpose of section 8e of the Act. When shipping point tolerances are applied, both domestic and imported grapes are placed on equal footing to compete in the marketplace. Imports are inspected at the port of entry and then trans-shipped across the country. In like manner, domestic grapes are inspected in the production area and then trans-shipped to other locations in the country. In addition, packaging and shipment practices have improved to such an extent as to eliminate many of the hazards of ocean transport. Transportation time alone does not justify differences in the level of tolerance standards. Otherwise, there would have to be different tolerances for grapes arriving from other grape exporting countries. Therefore, the application of shipping point tolerances to imported grapes at the port of entry is appropriate since those standards are applied to domestic grapes under the marketing order.

Additional commenters requested that inspection be made either at the point of origin of the table grapes under shipping point tolerances, or at the U.S. ports under en route or destination tolerances. Inspection of fresh fruits and vegetables is performed under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627, section 203h). For the reasons set forth above, point of origin inspections would be inconsistent with the Act. In any case, the 1946 Act does not authorize point of origin inspections to be conducted in foreign countries.

These commenters also requested that May 1 be established as the permanent effective date for imported table grape shipments. Section 8e states in part, that ". . . The importation into the United States of any such commodity other than dates for processing, *during the time such order is in effect* shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions promulgated hereunder." Accordingly, to establish a permanent May 1 effective date, for table grape import regulations regardless of the effective date for the domestic requirements would not be authorized under section 8e of the Act.

The Chilean Exporters Association also advanced a number of other arguments with respect to the legality of the marketing order. Such arguments included that the structure of the order committee, i.e., composed of California growers and handlers, and the procedure for implementation of the order violates fundamental principles of fair play and representative government in that regulations issued under the order effectively also regulate imported grapes without providing importers appropriate representation or notice of committee meetings.

Arguments regarding the validity of marketing orders have undergone extensive judicial review. The courts have consistently upheld the validity of the Act and marketing orders issued thereunder with respect not only to the authority to issue regulations with respect to grade, size, or quality of commodities under marketing order regulations and their periods of application, but also composition and operation of committees appointed to locally administer the marketing order.

The CEA argued that no substantial basis exists for the imposition of domestic grade requirements effective April 10 this season or any subsequent season. In support of this argument, the CEA provided a chart illustrating the history of Marketing Order 925 from 1981 through 1986. The chart illustrated that only in 1986 have there been shipments of domestic grapes prior to May 1. However, as the CEA chart confirms shipments of domestic grapes began April 28 for the 1986 season.

It should be noted that there is evidence supporting the view that grape imports would experience little adverse impact and may even benefit from a slightly earlier date for quality regulations. The CDGAC argues that a change in the effective date of table grape quality restrictions from May 1 to April 10 would anticipate these prospective conditions and alleviate the need for informal rulemaking to implement earlier dates for the domestic and import table grape regulations. The continuing regulation has been in effect since 1985, however in 1986 that date was changed to reflect earlier shipments of domestic grapes in that season.

According to the CDGAC, changing the effective date might only shift consumption of imported table grapes on the order of five-six percent with consumption higher in April and lower in May by that amount. The committee noted that the effect on the price of imported table grapes would be much smaller, on the order of a one-two percent change at most. The committee also stated that the prices would be lower in April and higher in May by that amount and would be the result of stabilized marketing conditions because of improved quality in the marketplace. To the extent that substantial storage of imports already occurs, the committee concluded that the change in the effective date would have even less effect on consumption timing. Moreover, according to the CDGAC, there are clear advantages to foreign producers in achieving a better reputation leading to more repeat purchases of their product. Such enhanced reputation usually translates into enhanced returns as well. Thus, the committee believes it is in all producers' interests, as well as the consumers', to provide a consistently high quality product.

The CEA argues that there is no substantive evidence that significant volumes of imported grapes are placed in cold storage and that such action would be contrary to the economics of grape imports. Seedless grapes arriving from Chile in April are, according to the CEA, end of season grapes which for that reason, can not be preserved in good condition for any length of time in cold storage. Price reflects quality, and storage of grapes would add to the importers' cost while simultaneously resulting in a lower price for the product.

The CDGAC contradicts the CEA's assertion that seedless grapes arriving from Chile are end of season grapes and could not be preserved for any length of time in cold storage. End of season grapes from Chile according to the CDGAC tend to be of prime maturity. The CDGAC quotes from Agriculture Handook No. 159, "The Cold Storage of Vinifera Grapes" USDA, ARS that states "Grapes to be stored for long periods should be of prime maturity, but not over-ripe." Thus, even though the condition of the grapes may or may not meet U.S. minimum standards, it appears that such grapes could meet the conditions necessary for storage, on at least a short term basis.

The CEA and other interested parties contended that Chilean table grapes imported in April 1986 were high quality produce. The alleged that a 1985 Department of Agriculture analysis (51 FR 12500) of inspection certificates for grapes imported April 15 through May 1, 1985 was flawed. That review indicated that 75 percent of grape imports would have failed to meet the applicable import requirements. While that review was not random, and included on site inspections where the quality of specific lots was in question, and did not include, for reference, a tabulation of inspections of grapes regulated under the marketing order, the sample represented about one-quarter of all

inspections for that period. From this it can be concluded that a significant quantity of imported grapes would have failed 8e requirements had they been in effect at the time. A survey of all import inspections during April 1986 indicated similar findings. These inspections represented about 20 percent of all inspections performed during that month. Of particular significance, on a week by week basis, the failure rate increased during the month of April. Thus, while not conclusive in itself, the results reinforce the domestic industry's contention that grapes imported during April tend to be more prone to lower quality.

In any event moving the effective date of the handling regulation forward to reach the earliest shipments of domestic grapes would by operation of statute (section 8e) apply minimum requirements to imports at the same time. The quality and storability of imported grapes are issues which bear upon the overall impact of a change in the effective date of the domestic regulation and does not relate to the question of whether the domestic regulation should be made effective earlier in the season.

There is evidence that shows a need to establish regulations affecting domestic grapes earlier than May 1. Over the past few years, shipments of domestic grapes have been advancing. Establishment of an effective date prior to May 1 of each year would alleviate the annual need for informal rulemaking on such action even after the continuing regulation was made effective. This would provide ample time for importers and the domestic industry to plan their operations accordingly. The establishment of an earlier date is necessary to assure the satisfactory quality and condition of table grapes marketed within the United States. The evidence supports that the marketing of high quality grapes results in repeated purchases, increased sales, and consistent prices and returns to the domestic table grape industry and that similar benefits may extend to importers.

Although the evidence justifies the need for an effective date before May 1, there is insufficient evidence supporting an April 10 date. The vagaries of weather have obviously had some impact on the starting dates of these shipments.

In addition, earlier shipment dates for domestic grapes reflect changed cultural practices and other growth conditions. The earlier effective date would prevent shipments of immature grapes by domestic growers based upon economic considerations. While an earlier effective date is necessary, it is doubtful, on the basis of the evidence presented, that shipments will occur as early as April 10 on a regular basis. Therefore, it is more appropriate and reasonable to begin the effective date of the domestic requirements on April 20 in 1987 and each season thereafter to protect against the shipment of low-quality grapes from the production area. This date is only eleven days earlier than the current May 1 effective date.

All table grapes marketed at the beginning of the domestic shipments should meet the same requirements, otherwise the establishment of minimum quality levels would be ineffectual. Section 8e of the Act requires an imported product to meet the same requirements as the domestic product. Based upon present information and growing conditions, it is concluded that an April 10 date would provide for unnecessary regulation of imports pursuant to section 8e of the Act at a time when domestic shipments would appear to be remote.

After thoroughly analyzing the CDGAC's recommendation and all comments received, the Department concluded that an effective date earlier than May 1 was appropriate but an April 10 effective date was inappropriate.

To the extent that any comments disagree with this determination all are denied.

The specified requirements for both California and imported table grapes will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Although the seasonal regulations will be effective for an indefinite period, the committee will continue to meet prior to and during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the California desert grape crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of California and imported table grapes would tend to effectuate the declared policy of the Act.

It is hereby found that the change in the effective period of the domestic table grape regulations from May 1 through August 14 to April 20 through August 15, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Marketing agreements and orders. Grapes, California.

7 CFR Part 944

Fruits, Import regulations, Grapes.

For the reasons set forth in the preamble, Parts 925 and 944 are amended as follows:

PARTS 925 AND 944—[AMENDED]

1. The authority citation for 7 CFR Parts 925 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Sections 925.304 introductory text and 944.503(a)(3) are revised to read as follows:

§ 925.304 California Desert Grape Regulation 6.

During the period April 20 through August 15, 1987, and April 20 through August 15 each year thereafter, no person shall pack or repack any variety of grapes except Emperor, Calmeria, Almeria, and Ribier varieties, on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, unless approved in accordance with paragraph (e) of this section nor handle any variety of grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, unless such grapes meet the following requirements.

* * * * *

§ 944.503 Table Grape Import Regulation 4.

(a) * * *

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements effective April 20 through August 15, 1987, and April 20 through August 15 of each year thereafter.

* * * * *

Dated: March 17, 1987.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–6141 Filed 3–18–87; 11:26 am]

BILLING CODE 3410–02–M

7 CFR Part 980

Vegetable Import Regulations for Onions; Change in Effective Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule will change the effective period of the onion import regulation to reflect a change in the effective period of the quality requirements of Idaho-Eastern Oregon onions under Marketing Order 958. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

EFFECTIVE DATE: This final rule becomes effective April 20, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, (7 U.S.C. 601-674) hereinafter referred to as "the Act," and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this rule on small entities. The regulatory action in this instance is a final rule that changes the effective period of the onion import regulation so that it applies 12 months each year, rather than ten (August 1 through June 1) to reflect the longer time quality requirements apply to Idaho-Eastern Oregon onions under Federal Marketing Order 958. The action is required pursuant to section 8e of the Act, which requires onions offered for importation to meet the same or comparable grade, size, quality, or maturity requirements as applied to domestic shipments.

The onion import regulation has been in effect since December 4, 1961 (20 FR 10632, November 14, 1961) and has helped assure the importation of good quality onions. This action does not effect domestic producers and handlers and, as such, does not impose any additional costs on these entities. Its impact is limited to onion importers.

It is estimated that a majority of the approximately 28 persons who are importers will be subject to the onion import regulation during the course of the current season. Small agricultural service firms including importers have been defined by the Small Business Administration (13 CFR 121.2) as those whose gross annual receipts are less than $3,500,000. The majority of onion importers may be classified as small entities under this definition.

Typically, only a small portion of the total onion imports each year are made during June and July, the two months which this action adds to the import regulation period. The heaviest onion imports occur during the first third of the year and the next most active period is the last third. During the 1982-1985 period, almost 75 percent of all onion imports were made during January through April, about 12 percent were made during September through December, and only five percent were made in June and July.

While this regulation extends the application of import requirements to imports during the months of June and July, a minimum quantity exception is provided. Pursuant to § 980.177(c), any importation which in the aggregate does not exceed 110 pounds may be imported without regard to the provisions of the import regulations.

The change is required pursuant to section 8e of the Act. Although the import regulation will be extended for two months, the change will maintain the quality of onions in the marketplace and enhance consumer satisfaction to the benefit of all of the industry including the importers.

On the basis of the foregoing, it is the Department's view that this regulation will not impose a significant economic burden on the small entities involved.

This action adopts as a final rule a proposal to change paragraphs (a)(1)(ii), (a)(2), and (b)(1) of § 980.117 of the onion import regulation (7 CFR 980.117; 43 FR 5499, February 9, 1978) to reflect the change made in the effective period of the quality requirements established under Marketing Order 958 for Idaho-Eastern Oregon onions (7 CFR 958.328, 50 FR 50157, December 9, 1985).

The proposed rule was issued on September 16, 1986, and published in the **Federal Register** on September 22, 1986 (51 FR 33616). Interested persons were given until October 22, 1986, to submit comments. No comments were received.

Section 8e provides that whenever a Federal marketing order is in effect for onions, the importation of onions shall be prohibited unless the onions meet the grade, size, quality, and maturity provisions of that order. Furthermore, section 8e provides that whenever two marketing orders regulating onions produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces onions in most direct competition with the imported onions.

The requirements for onion imports are comparable to those effective under Marketing Order 958 for Idaho-Eastern Oregon onions (7 CFR Part 958) or those effective under Marketing Order 959 for South Texas onions (7 CFR Part 959), depending upon which area happens to be the dominant shipper and in most direct competition with the imported commodity. Both Federal marketing orders are effective under the Act.

The December 9, 1985, change in quality requirements for Idaho-Eastern Oregon onions extended their effective period from 10 consecutive months (August 1 to June 1) to a year (August 1 to July 31). That change requires the onion import regulation to be based upon the Idaho-Eastern Oregon requirements in all months except the approximately mid-March through May period when South Texas has historically been the dominant shipper and is in most direct competition with imported onions. South Texas onions are regulated from March 10 through June 15, except that after June 1 there are no applicable grade, size, quality, and maturity requirements that would be applicable to onion imports pursuant to section 8e of the Act (47 FR 8551, March 1, 1982; 48 FR 7427, February 22, 1983; 48 FR 25169, June 6, 1983; 49 FR 4931, February 9, 1984; 51 FR 7547, March 5, 1986).

List of Subjects in 7 CFR Part 980

Marketing agreements and orders, Imports, Onions.

For the reasons set forth in the preamble, 7 CFR Part 980 is amended as follows:

PART 980—VEGETABLES; IMPORT REGULATIONS; ONIONS

1. The authority citation for 7 CFR Part 980 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 980.117 Import regulations; onions (43 FR 5499, February 9, 1978) is amended by revising paragraphs (a)(1)(ii), (a)(2), and (b)(1) to read as follows.

§ 980.117 Import regulations; onions.

(a) * * *

(1) * * *

(ii) Since December 9, 1985, grade, size, quality, and maturity regulations have been in effect pursuant to these orders during the period August through July;

* * * * *

(2) Therefore, it is hereby determined that: Imports of onions during the June through approximately mid-March period are in most direct competition with the marketing of onions produced in designated counties in Idaho and in Malheur County, Oregon, covered by Order No. 958, as amended (7 CFR Part 958), and during the approximately mid-March through May period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Order No. 959, as amended (7 CFR Part 959).

(b) * * *

(1) During the June through approximately mid-March period of each marketing year, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

* * * * *

Dated: March 4, 1987.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–6062 Filed 3–19–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–ANE–50; Amdt. 39–5528]

Airworthiness Directives; Pratt & Whitney (PW) JT9D–7R4D, D1, E, E1, E4, and H1 Turbofan Engines Installed on Boeing Company B767, and Airbus Industrie A310 and A300 Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain PW JT9D–7R4 engines installed on B767, A310, and A300 aircraft. The AD requires at least one engine installed on B767, A310, or A300 aircraft to be configured with inlet guide vane (IGV) through stage 7 variable stator vane synchronizing ring runners with a Class 2 average or more. Aircraft so configured must be operated in accordance with a specified thrust management procedure. It also requires complete fleet modification by December 31, 1987. The AD was needed to prevent a low altitude surge which could result in an inflight shutdown following a power reduction shortly after takeoff.

DATES: Effective March 20, 1987 as to all persons except those persons to whom it was made immediately effective by telegraphic AD (TAD) T86–25–51, issued December 12, 1986, which contained this amendment.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the **Federal Register** on March 20, 1987.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Pratt & Whitney, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. The applicable operations bulletins may be obtained from Airbus Industrie, Flight Division, Office of Airworthiness, P.O. Box 33, F–31707 Blagnac Cedex, France, or from Boeing Commercial Airplane Company, P.O. Box 3707, MS 3k–13, Seattle, Washington 98124–2207.

A copy of the service information is contained in the Rules Docket Number 86–ANE–50, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE–142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: On December 12, 1986, TAD T86–25–51 was issued and made effective immediately as to all known U.S. owners and operators of certain PW JT9D–7R4 turbofan engines, installed on B767, A310, and A300 aircraft. The TAD requires at least one engine installed on B767, A310, or A300 aircraft to be configured with IGV through stage 7 variable stator vane synchronizing ring runners with a Class 2 average or more within 10 calendar days after receipt of the TAD. Aircraft so configured must be operated in accordance with a specified thrust management procedure. It also requires complete fleet modification by December 31, 1987, in accordance with PW SB 72–316, dated October 22, 1986. The FAA has determined that clearance between the high pressure compressor (HPC) case and the variable stator vane synchronizing ring runners decreases during operation at takeoff power and could cause temporary binding of the system during power reduction. An engine deceleration during this takeoff/climb period could cause the stator vanes to remain open, reducing the available surge margin. Ten surges have occurred as the high rotor speed (N2) decreased below 70 percent N2. AD action was then necessary to prevent low altitude surges following a power reduction shortly after takeoff due to inadequate clearance between the HPC case and the synchronizing ring runners. The only difference in this amendment as compared to the telegraphic AD is that the note explaining Class 2 determination has been redefined. The FAA has determined that this revision will not have a negative impact on the fleet.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams, issued December 12, 1986, to all known U.S. owners and operators of certain PW JT9D–7R4 turbofan engines installed on B767, A310, or A300 aircraft. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this action

involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety, Incorporation by Reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD).

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–7R4D, D1, E, E1, E4, and H1 turbofan engines installed on Boeing Company B767, and Airbus Industrie A310 and A300 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent low altitude surges which could result in an inflight shutdown on JT9D–7R4 series engines installed on B767, A310, or A300 aircraft, accomplish the following:

(a) Inspect inlet guide vane (IGV), stage 5, stage 6, and stage 7 compressor variable stator vane synchronizing ring runners within the next 10 calendar days in service from the effective date of this AD in accordance with the applicable PW JT9D–7R4 engine manual, Part Number (P/N) 785058, 785059, or 789328. Determine if the engine is configured with IGV, stage 5, stage 6, and stage 7 runners with a Class 2 average or more.

Note.—Definition of Class 2 average is an arithmetic average of the IGV, stage 5, stage 6, and stage 7 stage runner classes. The IGV through stage 7 runners, P/N's 678495, 678496, 698497, and 623625, respectively, are classified as being Class 1, 2, or 3. The IGV through stage 7 runners P/N's 804046, 804047, 804048, and 804049, respectively, as defined in PW SB 72–316, are non-classified but for the purpose of computing class average are computed as Class 3, even though P/N 804049 stage 7 runnner will provide greater clearance than P/N 623625 Class 3 stage 7 runner.

(1) B767, A310, and A300 aircraft with at least one installed JT9D–7R4 series engine configured with IGV through stage 7 runners with a Class 2 average or more may be returned to service, provided the applicable following procedure is adhered to and incorporated into the normal procedure section of the aircraft flight manual (AFM):

(i) Operate B767 aircraft in accordance with Boeing 767 Operations Bulletin Number (OB) 86–13, dated December 9, 1986, or FAA approved equivalent.

(ii) Operate A300 series and A310 series aircraft in accordance with Airbus Operations Engineering Bulletin Numbers (OEB) 50/1 and 86/1 respectively, or FAA approved equivalent.

(2) For B767, A310, and A300 aircraft with both JT9D–7R4 series engines configured with IGV through stage 7 runners with less than a Class 2 average, accomplish the following prior to further flight:

Remove and replace runners with a suitable class to establish a Class 2 average or greater, or accomplish PW service bulletin (SB) 72–316 dated October 22, 1986, or FAA approved equivalent, on at least one installed engine. Aircraft may then be returned to service in accordance with paragraph (a)(1) above.

(b) Modify IGV through stage 7 runners in accordance with PW SB 72–316, dated October 22, 1986, or FAA approved equivalent, prior to December 31, 1987.

Note.—For an individual operator whose fleet of B767, A310, or A300 aircraft have both engines on all aircraft configured with IGV through stage 7 runners with a Class 2 average or greater, or in accordance with paragraph (b) above, the procedure specified in paragraph (a)(1)(i) or (a)(1)(ii) may be discontinued and removed from the aircraft flight manual.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, may adjust the compliance times specified in this AD.

PW SB 72–316, dated October 22, 1986; Boeing 767 OB 86–13 dated December 9, 1986; and Airbus Industrie OEB 50/1 and 86/1, dated November 28, 1986, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies, upon request, from Pratt & Whitney, Commercial Division, 400 Main Street, East Hartford, Connecticut 06108; Airbus Industrie, Flight Division, Office of Airworthiness, P.O. Box 33, F–31707 Blagnac Cedex, France; and Boeing Commercial Airplane Company, P.O. Box 3707, MS 3k–13, Seattle Washington 98124–2207. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86–ANE–50, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on March 20, 1987, as to all persons except those persons to whom it was made immediately effective by TAD, issued December 11, 1986, which contained this amendment.

Issued in Burlington, Massachusetts, on January 20, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87–5999 Filed 3–19–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–ASO–28]

Designation of Transition Area, Walnut Cove, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Walnut Cove, North Carolina, transition area to accommodate Instrument Flight Rules (IFR) operations at the Meadow Brook Field Airport. This action lowers the base of controlled airspace from 1,200′ to 700′ above the surface in the vicinity of the airport. An instrument approach procedure based on the existing Greensboro, North Carolina, Very High Frequency Omnidirectional Radio Range/TACAN (VORTAC), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 U.t.c., June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert A. Wachsman, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On December 16, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR

Part 71) by designating the Walnut Cove, North Carolina, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Meadow Brook Field Airport. The operating status of the airport is changed from VFR to IFR (51 FR 47255). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Walnut Cove, North Carolina, transition area to accommodate IFR operations at the Meadow Brook Field Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Walnut Cove, North Carolina (New)

That airspace extending upward from 700' above the surface within a 7.5-mile radius of Meadow Brook Field Airport (Lat. 36°18'05" N., Long. 80°08'55" W.); excluding the portion that coincides with the Greensboro, North Carolina, transition area.

Issued in East Point, Georgia, on March 12, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 87-6000 Filed 3-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 86-AWA-14]

Amendment to Hours of Operation for Restricted Areas; Quantico, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action increases, by two hours daily, the times of designation for Restricted Areas R-6608A and R-6608B, near Quantico, VA. The existing normal hours of operation are inadequate to accommodate increased military needs for the airspace necessitating expanded activation of the areas through the "other times by NOTAM" provision published for these areas. Current and future requirements justify a permanent modification to the time of designation. This action will enhance flight safety through publication of actual hours of operation on the appropriate aeronautical charts.

EFFECTIVE DATE: 0901 UTC, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to increase the times of designation for Restricted Areas R-6608A and R-6608B near Quantico, VA (51 FR 15351). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.66 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations increases the time of designation for R-6608A and R-6608B, near Quantico, VA, by two hours daily.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.66 is amended as follows:

R-6608A Quantico, VA [Amended]

By removing the words "Continuous, 0700 to 2400 hours, local time; other times by NOTAM issued at least 24 hours in advance." and substituting the words "0500 to 2400 local time daily; other times by NOTAM 24 hours in advance."

R-6608B Quantico, VA [Amended]

By removing the words "Continuous, 0700 to 2400 hours, local time; other times by NOTAM issued at least 24 hours in advance." and substituting the words "0500 to 2400 local time daily; other times by NOTAM 24 hours in advance."

Issued in Washington, DC, on March 12, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-5994 Filed 3-19-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24209; File No. S7-17-86]

Exemption of Certain Foreign Government Securities Under the Securities Exchange Act of 1934 for Purposes of Futures Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission amends Rule 3a12-8 under the Securities Exchange Act of 1934 to eliminate the requirement that futures on designated foreign government securities be traded on a board of trade in the country that issued those securities. The Rule currently designates certain United Kingdom, Canadian and Japanese government securities as "exempted securities" under the Act for the purpose of marketing futures contracts on those securities in the United States. The Rule contains a number of conditions for such securities to be deemed exempt, including the requirement that the futures be traded on a board of trade located in the country that issued the underlying security. The amendment will remove the requirement, and allow such futures to be traded on boards of trade in the United States. Trading the underlying securities, absent compliance with applicable registration and other regulatory requirements, will remain prohibited to the same extent as under current federal securities law.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Underhill, Esq., (202) 272-2375, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), futures trading on individual securities is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Securities and Exchange Commission ("SEC"), however, adopted Rule 3a12-8 ("Rule") to designate British, Canadian and Japanese government debt obligations ("designated foreign government securities") that meet certain conditions as exempted securities under the Exchange Act only for purposes of marketing futures on those securities in the United States. In effect, the designation of these securities as "exempted securities" removes the CEA's prohibition against marketing futures on the securities in the United States, so long as the terms of the Rule are satisfied. The SEC is today adopting an amendment to the Rule.

The amendment retains the current list of designated foreign government securities, but removes one of the conditions of the exemption, *i.e.*, the requirement that the futures be traded on or through a board of trade located in the country that issued the designated foreign government security ("the location restriction"). The amendment effectively removes the CEA's prohibition against trading futures on designated securities on U.S. contract markets or marketing in the United States foreign futures traded on contract markets other than those located in the issuing country. To qualify for the exemption, futures contracts on the enumerated securities must comply with all other existing requirements of the Rule.

II. Background

The CEA, as amended by the Futures Trading Act of 1982,[1] prohibits the trading of futures contracts on individual securities unless such securities qualify as exempted securities under section 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[2] Foreign government securities are not exempted under either of these sections. Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted securities" includes

> such other securities . . . as the Commission may, by such rules and regulations as it deems consitent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

In March 1984, pursuant to this authority, the Commission promulgated Rule 3a12-8.[3] The Rule, as amended,[4] designates British, Canadian and Japanese government securities that meet certain conditions as "exempted securities" under the Exchange Act. The primary purpose of the Rule is to permit certain foreign, exchange-traded futures contracts on the designated securities to be marketed in the United States. Under the Rule, designated foreign government securities are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) the securities are not registered in the United States; (2) the futures transactions involve contracts that require delivery outside the United States; and (3) the futures contracts are traded on a market located in the country that issued those securities.

At the time the Commission first proposed Rule 3a12-8, several commentators objected to the location restriction, among other matters.[5] For example, the Chicago Board of Trade ("CBT") and the Chicago Mercantile Exchange ("CME") argued that the proposed exemption should allow the Commodity Futures Trading Commission ("CFTC") to designate United States boards of trade as contract markets for futures on the exempted British and Canadian securities.[6] The CBT and CME also

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[1] Pub. L. No. 97-444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.* (1984).

[2] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v), provides that "[n]o person shall offer to enter into, enter into or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act . . . or section (3)(a)(12) of the . . . Exchange Act. . . ."

[3] *See* Securities Exchange Act Release Nos. 20708 ("1984 Adoption Release"), March 2, 1984, 49 FR 8595, and 19811 ("1983 Proposal Release"), May 25, 1983, 48 FR 24725.

[4] The Rule recently was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423, July 11, 1986, 51 FR 25996. As originally adopted, the Rule applied only to British and Canadian government securities. *See* 1984 Adoption Release, note 3, *supra*. In addition, the Commission has received petitions to add the securities of Australia, France and New Zealand to the list of designated government securities. *See* letters from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, to Richard Ketchum, Director, Division of Market Regulation, SEC, dated August 20, 1986 (Australia) and October 1, 1986 (New Zealand); letter from Eugene W. Boehringer, Managing Director, First Boston Corporation, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 1, 1986 (France). The Commission anticipates publishing for comment appropriate proposed rule amendments regarding these requests in the near future.

[5] *See* letter from Thomas R. Donovan, President, Chicago Board of Trade, to George A. Fitzsimmons, Secretary, SEC, dated July 5, 1983, and letter from Thomas Eric Kilcollin, Vice President of Research and Chief Economist, Chicago Mercantile Exchange, to George A. Fitzsimmons, Secretary, SEC, dated July 28, 1983, located in File No. S7-975.

[6] *Id.*

contended that to do otherwise would confine futures trading to precisely those markets over which United States government agencies have the least regulatory oversight.

The Commission, nevertheless, adopted the location restriction for several reasons. First, the Commission noted that, if the futures were traded only in the country that issued the underlying security, that country "would have a strong interest in ensuring the integrity of the futures market." [7] Second, the Commission noted that a collateral benefit of the restriction was to "reduce the likelihood that some off-shore futures market might be established or utilized for the purpose of disguised marketing of the underlying securities." [8] Finally, the Commission concluded that because "the prospective exempted securities are, in fact, located within the territories of the issuer-government . . . [a] cautious approach is furthered by limiting [the] [R]ule to markets and locations presently known." [9] The Commission stated, however, that it might revisit this issue if proposals by U.S. boards of trade to trade futures contracts on foreign government securities were developed.

On February 13, 1986, the CBT submitted to the Commission a letter in which the CBT stated that it would soon apply to the CFTC for designation as a contract market for trading in futures contracts on yen-denominated Japanese government bonds, pound-denominated British gilt bonds and Canadian dollar-denominated Canadian government bonds.[10] The CBT and Futures Industry Association ("FIA") requested that the Commission amend Rule 3a12–8 to provide that futures contracts on specified foreign government securities may be traded on CFTC-designated markets.[11] In addition, the London International Financial Futures Exchange ("LIFFE") requested that the rule be expanded to permit the marketing to U.S. investors of futures on foreign government debt traded on designated foreign boards of trade outside the country of issuance of the underlying debt.[12] As a result, on July 11, 1986, the Commission issued a release proposing for comment an amendment to Rule 3a12–8 that would remove the condition that the futures be traded on a board of trade located in the country that issued the underlying security ("1986 Proposal Release").[13]

III. Discussion

In response to the 1986 Proposal Release the Commission received one comment letter. In its comment letter, the CFTC endorsed amending the Rule to eliminate the location restriction and addressed three specific issues raised in the 1986 Proposal Release.[14]

First, the Commission had requested comment on whether the Rule would be used as a vehicle to distribute unregistered foreign government securities in the U.S. In its comment letter, the CFTC asserted its continuing belief that the requirement that delivery on the futures contracts on foreign government debt occur outside the United States would help to ensure that sales of the futures contracts will not be used as a way to sell in the U.S. the underlying, unregistered debt instruments.

Second, the CFTC stated that it would consider whether trading futures on the designated securities on domestic boards of trade might require a greater level of disclosure about the underlying securities than simply marketing such foreign futures in the U.S.

Finally, the Commission had solicited comment on whether there are any other legal or policy factors relevant to determining whether the domestic trading of futures on specified unregistered securities or the marketing to U.S. investors of foreign futures on such securities traded on boards of trade outside the country of issuance, for delivery outside the U.S., is appropriate and consistent with the purposes of the federal securities laws, the CEA, and the protection of U.S. securities investors and markets. In response, the CFTC maintained that elimination of the location restriction is consistent with both the federal securities laws and the CEA. According to the CFTC, the Rule, as amended, will continue to provide adequate protection to both U.S. securities investors and the securities markets and U.S. futures traders and the futures markets. The CFTC emphasized that its oversight of domestic boards of trade would provide adequate safeguards to U.S. investors, and that CFTC regulations may in fact provide greater protection to U.S. customers trading through domestic boards of trade than to those trading through foreign boards of trade.

After careful consideration, the Commission has concluded that elimination of the location restriction is consistent with the protection of U.S. investors. With the increasing internationalization of the securities markets, more U.S. investors maintain investment positions denominated in foreign currencies, including debt securities of foreign public and private issuers.[15] The increased availability of foreign government futures could serve valuable hedging and other risk shifting uses for such investors. In this regard, the Commission also believes the amendment will promote competition among boards of trade listing the same or different futures on foreign government debt.

The Commission does not believe that there is a serious risk that foreign government futures will be used to distribute unregistered foreign government securities in the U.S. In this regard, we note that most trading of futures in this country does not result in actual delivery of the underlying commodity through the mechanism of the futures contract. Usually only 2% to 10% of futures positions are held for delivery.[16] As a consequence, the

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[7] 1983 Proposal Release, note 3, *supra*, 48 FR at 24727. The CFTC noted, however, that presumably "any country would have a strong interest in assuring the integrity of its futures markets, even if that country does not produce the commodity or issue the debt obligation." Letter from Kenneth M. Raisler, General Counsel, CFTC, to Richard G. Ketchum, Associate Director, Division, of Market Regulation, SEC, at 4, dated August 1, 1983.

[8] 1984 Adoption Release, note 3, *supra*, 49 FR at 8597 n.15. Similarly, the Commission noted that with respect to domestic boards of trade trading futures on foreign government debt securities, such trading would raise "discrete concerns regarding the expansion of cash trading that might develop if there were present here substantial markets in the overlying futures."

[9] *Id.*, 49 FR at 8597 (footnote omitted).

[10] *See* No-action Request for Domestic Trading of Futures on Japanese Government Bonds, British Gilt Bonds, or Canadian Government Bonds, or Petition to Amend Rule 3a12–8, dated February 3, 1986 ("Petition"). Available in File No. S7–4–86.

[11] *See* Petition, note 10, *supra*, and letter from John M. Damgard, President, FIA, to John Wheeler, Secretary, SEC, dated February 26, 1986.

[12] *See* letter from Brooksley Born, Arnold & Porter, counsel for LIFFE, to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, dated June 20, 1986. LIFFE also indicated that it is actively considering developing a futures contract on the Japanese yen bond.

[13] *See* Securities Exchange Act Release No. 23422 (July 11, 1986), 51 FR 26018. Under the proposal, subsection (a) (2) of Rule 3a12–8 would be amended to remove the location restriction. The Rule would retain the current list of designated foreign government securities, as well as the requirements that the underlying securities be unregistered and that the delivery on the futures contracts occur outside the United States.

[14] Letter from Kenneth M. Raisler, General Counsel, CFTC, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated September 8, 1986 ("CFTC Comment Letter").

[15] *See* Securities Exchange Act Release No. 21958, April 18, 1985, 50 FR 16302. As evidence of this growing internationalization, futures on U.S. Treasury bonds are now being traded on the Sydney Futures Exchange and LIFFE.

[16] The figure for debt futures is at or below 2%. *See* CBT, Statistical Futures Yearbook (1985); CME, International Monetary Market Yearbook (1985).

Commission does not expect that significant numbers of foreign government futures investors will hold their positions for delivery. Further, the availability of a U.S. futures market for foreign bonds would not appear to offer a foreign government a realistic means of efficiently raising capital in the U.S.; if purchase and delivery of the underlying securities is necessary, it most likely would occur in the foreign country's secondary market, not from primary offerings of the government. The Commission thus believes that the other two requirements of the current Rule (*i.e.*, that the underlying securities not be registered in the U.S. and that delivery on the futures contracts occur outside the U.S.) will adequately ensure that futures trading, even domestically, does not disrupt or dilute the registration, disclosure and other requirements of the federal securities laws.

The Commission does not believe it is appropriate to limit an amendment to delete the location restriction to trading on domestic boards of trade regulated by the CFTC. If, as has been indicated, the LIFFE seeks to trade a future on Japanese yen bonds, the Commission does not believe that such trading would be any more likely to contribute to the development of an unregistered securities market in the underlying debt securities in this country then trading such futures on, for example, the CBT. Indeed, it could be argued that futures trading on a domestic board of trade is, in fact, more likely to induce U.S. investors to trade the underlying debt securities. Moreover, the marketing of such LIFFE futures in the United States would be subject to the CFTC's antifraud rules.[17]

Finally, the Commission agrees with the CFTC that the CFTC's oversight of domestic boards of trade will provide effective safeguards against abuse. With respect to non-U.S., non-issuance countries marketing foreign futures in the U.S. (*e.g.*, LIFFE trading futures on Japanese yen bonds), the Commission also believes that the CFTC's antifraud authority regarding such futures trading will permit the CFTC to address abuses in the futures market itself.

For the above-mentioned reasons, the Commission believes the amendment to the Rule to accommodate the trading on domestic as well as foreign boards of trade of futures on designated foreign government securities is consistent with the purposes of the federal securities laws and Section 2(a)(1)(B)(v) of the CEA.[18]

IV. Regulatory Flexibility Act Certification

The Chairman of the Commission certified in connection with the 1986 Proposal Release that the amendment to Rule 3a12–8, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

V. Effects on Competition

Section 23(a)(2) of the Act [19] requires the Commission, in amending rules, to consider their potential impact on competition. The Commission believes that elimination of the location restriction will enhance competition by allowing additional markets to offer competing products.

The Commission has determined to make the foregoing action effective 30 days after publication in the **Federal Register.**

VI. Statutory Basis

The amendment to Rule 3a12–8 is being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Adopted Amendment

The Commission is amending Part 240 of Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.3a12–8 also is issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a). * * *

2. Section 240.3a12–8 is amended by revising paragraph (a)(2) to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(2) The term "qualifying foreign futures contracts" shall mean any contracts for the purchase or sale of a designated foreign government security for future delivery, as "future delivery" is defined in 7 U.S.C. 2, provided such contracts require delivery outside the United States, any of its possessions or territories, and are traded on or through a board of trade, as defined at 7 U.S.C. 2.

* * * * *

By the Commission.

Dated: March 12, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–6118 Filed 3–19–87; 8:45 am]

BILLING CODE 8010–01–M

[17] CFTC Comment Letter, note 14, *supra*, at 4. The CFTC cited Section 4(b) of the CEA, which authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents. Rule 30.02, 17 CFR 30.02, promulgated under section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on a foreign exchange. In addition, the CFTC recently proposed a series of regulations governing the domestic offer and sale of regulations governing the domestic offer and sale of futures and options contracts traded on foreign boards of trade. The proposed rules, if adopted, would, among other things, require that the domestic offer and sale of foreign futures be effected through CFTC registrants, or comparably regulated entities, under a regulatory framework similar to that governing domestic futures contracts. *See* 51 FR 12104 (April 8, 1986).

[18] As noted above, the CEA prohibits the sale of futures on individual securities, other than exempted securities.

[19] 15 U.S.C. 78w(a)(2) (1984).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled—Income and Resources; Age 18 and Alien Deeming

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations reflect the provisions of section 203 of Pub. L. 96–265 which amended section 1614(f)(2) of the Social Security Act (the Act) and section 504 of Pub. L. 96–265 which added sections 1614(f)(3) and 1621 to the Act. Section 1614 of the Act as amended by section 203 eliminates deeming of parents' income and resources to a child when he or she becomes age 18. Sections 1614(f)(3) and 1621 of the Act as added by section 504 require that, with a few exceptions, the income and resources of the sponsor of an alien (and of the sponsor's spouse if sponsor and spouse live together) are to be deemed to be the income and resources of the alien. Both provisions were effective October 1, 1980.

EFFECTIVE DATE: These regulations are effective April 1, 1987, but statutory changes which these regulations reflect were effective October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION: We are revising our rules on overpayments, income, resources and family relationships under the Supplemental Security Income (SSI) program. The revisions are necessary because of the provisions of sections 203 and 504 of Pub. L. 96–265. Section 203 amended section 1614(f)(2) and section 504 added sections 1614(f)(3) and 1621 of the Act. The proposed rules were published December 10, 1981 (46 FR 60470). We provided a 60-day comment period and received only one comment. The comment was not relevant to these regulations as it objected to a statutory provision that grants SSI eligibility to aliens admitted as refugees or economic asylees rather than to the sponsor-to-alien deeming provisions that are the subject of these regulations.

Since the SSI program began, section 1614(f) of the Act has required that the income and resources of spouses and parents who are not eligible for SSI be considered as the income and resources of their spouses and children who live with them and are eligible for SSI benefits. This process is called deeming—we deem the income and resources of the ineligible spouse or parent to be those of the SSI beneficiary. The statute authorizes the Secretary to determine income and resources that would be inequitable to deem under the circumstances and thus are excluded before any is deemed to the beneficiary. The deemed income and resources are added to those the claimant already has and the total is subject to the limits and exclusions the statute provides for eligible individuals and couples.

The income and resources of parents not eligible for SSI are deemed to their eligible children in the household. Under section 1614(f)(2) of the Act prior to amendment, parental deeming could apply until a child reached age 21. Section 1614(c) defined child as an unmarried individual under the age of 18 or under the age of 22 if a student. Under former regulations, parental deeming stopped when the children reached age 18 or, if the children were students, when they reached age 21. As of October 1, 1980, the effective date of section 1614(f)(2) as amended by section 203 of Pub. L. 96–265, deeming of parental income and resources stops in all cases when children reach age 18. Under section 203 of Pub. L. 96–265, from October 1, 1980 through September 30, 1983, parental deeming could continue to apply to children who were at least age 18 but under age 21 in September 1980, if they received a Federal SSI benefit for that month, and would have received a lesser benefit if deeming stopped. This policy is not included in these final regulations because all children who were at least age 18 in September 1980 are now over 21.

Sections 1614(f)(3) and 1621 of the Act, as added by section 504 of Pub. L. 96–265, add a new kind of deeming—the income and resources of sponsors of aliens are considered to be those of aliens they sponsor. A sponsor is an individual who has signed an affidavit agreeing to support an alien as a condition of the alien's admission for permanent residence in the United States. Under section 1621 of the Act, the Departments of Justice and State will provide information to SSA about sponsors and aliens, and will inform sponsors that information they supply will be given to SSA and that they may be asked for additional information if the aliens apply for SSI benefits.

There are some exceptions to sponsor-to-alien deeming. Under the terms of the statute we do not deem a sponsor's income and resources to aliens who have been admitted as refugees under certain provisions of the Immigration and Nationality Act or to aliens who have been granted political asylum by the Attorney General of the United States. Nor do we deem to aliens beginning with the month they meet the statutory definition of blindness or disability if this occurs after their admission to the United States. Deeming stops if it applied before the blindness or disability began.

A sponsor's income and resources are deemed to aliens who first apply for SSI benefits after September 30, 1980, and are deemed to aliens for 3 years after their admission to the United States.

Subparts K, L, and R of Regulations No. 16 require revision because section 1614(f)(2) of the Act as amended by section 203 of Pub. L. 96–265 ends deeming of parental income to children who reach age 18. Subparts E, K and L require revision because sections 1614(f)(3) and 1621 of the Act as amended by section 504 of the statute establishes deeming of a sponsor's income and resources to an alien.

Subpart E, Payment of Benefits, Overpayments, and Underpayments, requires revision because section 1621 of the Act establishes conditions for recovery of overpayments made to aliens from both aliens and their sponsors.

Subpart K, Income, explains how the receipt of income affects SSI eligibility. It describes the different types of income, including income deemed from a parent to an eligible child. Subpart L, Resources, provides similar information about resources. We must amend sections in Subpart K, Income, and Subpart L, Resource and Exclusions, to revise the rules on parent-to-child deeming and to include sponsor-to-alien deeming of income and resources. These sections were also revised subsequent to the NPRM to reflect certain provisions regarding retrospective monthly accounting in section 1611 of the Act as amended by section 2341 of Pub. L. 97–35. These changes were published on November 26, 1985 (50 FR 48563) as final rules.

Subpart R, Relationship, requires revision because of the termination of parent-to-child deeming when the child reaches age 18.

Subpart E, Payment of Benefits, Overpayments and Underpayments

Revisions in Subpart E which were not included in the NPRM are included in these final regulations as they are an integral part of carrying out the statute these regulations implement. In § 416.535 we explain that, under certain circumstances, a sponsor is jointly (with the alien) and individually liable for repayment of overpayments which have been made to the alien. This can apply only if the overpayment was caused by the sponsor's failure to supply correct information and only with respect to overpayments made to the alien during the three-year period in which deeming from the sponsor applies. Section 1621 of the Act provides that sponsor liability exists except where the sponsor was without fault or had good cause for failure to report correctly. To establish without fault or good cause, the evidence must show that the sponsor did not knowingly fail to supply pertinent information. Accordingly, we have made clear that waiver of adjustment or recovery of an overpayment under § 416.550 does not apply to a sponsor because the statute does not authorize waiver for a sponsor. In § 416.570 we have added an exception to the general rules on recovery by adjustment of benefits. If recovery of an overpayment for which an alien and the sponsor are jointly and individually liable is not otherwise effected, SSA must recover the overpayment by adjusting other benefits payable under the Act to the alien and

the sponsor. Section 1621 of the Act clearly provides that an overpayment not otherwise repaid or recovered in accordance with section 1631(b) will be withheld from any subsequent payment to which the alien or the sponsor is entitled under any provision of the Act. As of this time, SSA is applying this provision to benefits payable under title II (Social Security insurance benefits) and title XVIII (Medicare benefits) since the administration and record-keeping of these programs are within the control of SSA.

Subpart K, Income

Section 416.1148 is revised to show that, if a beneficiary has income deemed from a sponsor and also receives cash or in-kind support and maintenance (food, clothing, or shelter) from the sponsor, we do not apply the one-third reduction. We count only the deemed income. This change implements section 1621(c) of the Act. Also, this section and § 416.1149 are revised to reflect the change to stop deeming income to children at age 18 rather than at age 21.

Section 416.1160 explains what deeming is, gives the basic steps we follow in deeming income, and defines terms used in connection with deeming. We have added the rules which end deeming from parents to children at age 18 and the rules which require deeming a sponsor's income to an alien. We have also made minor changes in these sections from those published in the NPRM to reflect certain provisions regarding retrospective monthly accounting published on November 26, 1985 (50 FR 48563) as final rules.

In § 416.1160 we have defined "dependent" because the statute provides for an allocation in deeming a sponsor's income to an alien for dependents. The statute does not define "dependent." These regulations use the same criteria used by the Internal Revenue Service for personal income tax purposes. This provides consistency among government agencies, is easy for the public to understand, and provides uniformity of administration for beneficiaries in all locations. We have provided that the term "dependent" does not include the alien or the alien's spouse because of a specific provision of the statute. Section 1621 of the Act states that the amount of a sponsor's income which shall be deemed to be the unearned income of an alien shall be reduced by an allocation for dependents of such sponsor (or sponsor's living with spouse), other than such alien and such alien's spouse.

This section also defines for deeming purposes a "sponsor" as an individual who signs an affidavit of support or similar agreement as a condition of an alien's admission to the United States for permanent residence. The term "sponsor" does not include an organization (such as the congregation of a church or a service club) or an employer who only guarantees employment for an alien but does not sign an affadavit of support. We define an alien's "date of admission or entry" to be the date established by the Immigration and Naturalization Service as the date the alien was admitted for permanent residence.

This section explains that if a sponsor lives with and is also the spouse or parent of the alien, we apply the rules for deeming from a spouse or parent rather than from a sponsor. The statute does not address this question and we believe we have discretion to decide which deeming rules to apply. It is our position that the objective of sponsor-to-alien deeming is to take care of situations where no deeming previously existed, not to replace existing rules.

Further, this section explains how we deem income when a sponsor of an alien is also the ineligible spouse or ineligible parent of another beneficiary and income is deemable to both the alien and the eligible spouse or eligible child. The statute is very specific regarding how to figure the amount of income to deem from a sponsor to an alien. It provides allocations for the sponsor and all dependents of the sponsor. Other provisions in section 1614(f) of the Act give the Secretary discretion to determine when it would be inequitable to deem from an ineligible spouse or ineligible parent to an eligible individual. SSA, therefore, will figure the amount of income to be deemed to an alien and to a spouse or child independently. The amount produced under the sponsor-to-alien deeming rule will be deemed to the alien. The amount produced for the spouse or child will be deemed to that individual after an allocation for the alien. This method of deeming exercises the Secretary's discretion in an equitable manner by recognizing the sponsor's financial responsibility for the alien as well as for the eligible spouse or child.

Current regulations for spouse-to-spouse and parent-to-child deeming make no allowance for the existence of the alien to whom income is also deemed. These rules, therefore, are being revised to provide an allocation for an alien in the spouse-to-spouse and parent-to-child deeming rules. The allocation is the same amount that has been provided for ineligible children in the household; i.e., the difference between the Federal benefit rate (FBR) for an eligible couple and the FBR for an eligible individual.

Section 416.1161 tells what amounts and types of income are excluded before we deem any of an ineligible individual's income to an applicant or a beneficiary. We have added the rules that apply to the sponsor of an alien. In determining the income of a sponsor, we do not include any income received by or on behalf of children in the sponsor's household. However, we do include income of the sponsor's spouse who lives in the same household. After determining the sponsor's total income, we exclude such types and amounts as are excluded by other Federal statutes. We also discuss in this section the amount of the alien's income which reduces the alien allocation in spouse-to-spouse and parent-to-child deeming.

Section § 416.1162 was added in the NPRM to explain when we do not deem the income of a sponsor to an alien. Upon further consideration, we decided that it would be preferable to add those rules to § 416.1166a(d) which is discussed below.

Section 416.1165 is revised to show that parent-to-child deeming stops the month after the month the child reaches age 18. If we deem parental income, we do not also reduce the benefits because the child receives food, clothing, and shelter (in-kind support and maintenance) or any other type of income from the parents. When deeming stops, we begin to include as a child's income the value of food, clothing, shelter, or other income provided by the parents. If the child receives in-kind support and maintenance from the parents, this may reduce the benefit by an amount equal to one-third of the FBR

Sections 416.1163, 416.1165, and 416.1166 explain the procedures for figuring how much income to deem from an ineligible spouse or ineligible parent to an eligible spouse, eligible child, or both. These sections are amended to provide an allocation for each alien to whom income also is deemed from the ineligible spouse or ineligible parent. We are adding examples to §§ 416.1163 and 416.1165 to illustrate how the allocation affects deemed income. We have updated these examples as they were stated in the NPRM to reflect the benefit increase that applied in January 1986 and to show that benefit amounts depend on the applicability of retrospective monthly accounting.

Section 416.1166a explains how we deem a sponsor's income to an alien. First we determine the amount of the sponsor's income as explained in § 416.1161(b). We next deduct allocations for the sponsor and the

sponsor's dependents. The allocation for the sponsor is the amount of the FBR for an individual and, for each dependent of the sponsor, one-half the FBR for an individual. However, for sponsors who are married and living together, the allocation for each sponsor is the amount of the FBR for an individual. We do not deduct from the sponsor's dependent's allocation the income of the dependent. The statute does not specify that the allocation be reduced by the dependent's income, just as it does not specify a deduction from the sponsor's allocation. In the absence of such a specific statutory directive, the preferable construction is that no deduction be made. After the appropriate allocations have been subtracted, we deem the balance to be the unearned income of the alien.

This section also includes examples to show how deeming rules apply in various situations. These examples have also been updated from the NPRM to reflect the January 1986 increase in benefits and retrospective monthly accounting.

We next explain in § 416.1166a(c) how deemed income is determined if a person sponsors more than one alien. The amount of income deemed to each alien is the same amount which would be deemed if there was only one alien.

In § 416.1166a(d) is an explanation of when sponsor-to-alien deeming is not applicable. We do not deem the income of a sponsor if the alien is admitted as a refugee under certain provisions of the Immigration and Nationality Act, has been given political asylum by the Attorney General of the United States, or becomes disabled or blind after admission to the United States. Under the new rules, sponsor-to-alien deeming does not apply beginning with the month the alien becomes disabled or blind after admission to the United States. It will, therefore, now be necessary to establish when an alien becomes disabled or blind (as defined in existing regulations, § 416.901). We have added statements to §§ 416.1163 and 416.1166a(d) of these final regulations to reflect certain provisions that reflect retrospective monthly accounting which were published as final rules on November 26, 1985 (50 FR 48563).

In the NPRM we revised § 416.1167 to update the paragraph that explained when we stop deeming a parent's income to a child and to add a paragraph that explained when we stop deeming a sponsor's income to an alien. Since publication of the NPRM that covered the rules in these final regulations, § 416.1167 has been rewritten to include rules related to the implementation of retrospective monthly accounting (50 FR 48563 published on November 26, 1985 as final rules) so that the revisions planned for these regulations are no longer appropriate. The information on parent-to-child deeming is already partially covered in the introductory paragraph of § 416.1165 so we have added the balance of the information to that paragraph. The information on sponsor-to-alien deeming has been moved to § 416.1166a as paragraph (c).

Since we have added an alien allocation in § 416.1163(c) which is the difference between the FBR for an eligible couple and the FBR for an eligible individual, we have also made a conforming change in § 416.1163(b) of these final regulations that was not shown in the NPRM. Effective January 1977, our regulations and instructions stated that an allocation for ineligible children in a household was in the amount of the difference between the FBR for an eligible couple and the FBR for an eligible individual. Even though our operating instructions have always provided that the allocation is the difference between the individual and couple FBR's, when Subpart K was recodified in October 1980 (45 FR 65547), we changed the terminology to one-half the FBR for an eligible individual because this was simpler language and, at the time, resulted in the same dollar amount. This is no longer true and there may be minor differences in benefit amounts because of the way we apply cost-of-living adjustments. We have, therefore, reverted to the original terminology in these regulations. Reverting to the original terminology will not disadvantage individuals since our operating policy has always remained the same. (This change does not apply to allocations for dependents of sponsors of aliens since the statute specifically describes the allocation formula to use.)

The appendix to Subpart K is being updated to show how the exclusions provided by other Federal statutes apply to income deemed from a sponsor to an alien. Each listing that differs for sponsor-to-alien deeming is annotated to show how it applies to a sponsor's income. The listings at II(c), IV(b)(3), IV(b)(4), IV(b)(11), IV(c), and IV(d) that provide that the exclusion applies to the sponsor's income only if the alien lives with the sponsor are so limited because the statute authorizing the exclusions apply only to benefits to which the household or member of the household would be eligible. The listings at IV(a) and V(a) that provide that the exclusion does not apply to a sponsor's income are so limited because the statutes authorizing the exclusions only apply to benefits or payments received by the individual receiving Federal assistance. Those that are not annotated apply to a sponsor's income exactly as they apply to that of an eligible individual or an ineligible parent and spouse for other deeming purposes. We have also deleted III(a) since the statutes have been repealed. Item V(a), the reference to the Domestic Volunteer Service Act, is being revised because the law was amended in 1980. Under the amended statute, the exclusion does not apply if the director of the action agency determines that the payment equals the minimum wage. In these final regulations we have also updated the appendix to include several entries regarding distribution of per capita judgment funds to Section IV, Native Americans, Indian tribes, and added a category because of the enactment in 1980 of Pub. L. 96–420, which relates to claims of Maine Indians. These new entries are an update to the appendix to the SSI program, in general, and not to the alien deeming provisions.

Subpart L, Resources and Exclusions

Subpart L, Resources and Exclusions, defines resources and explains which resources we do or do not count to determine SSI eligibility. Resources may include those of a parent that are deemed to an eligible child. Section 416.1202 is being revised to show that deeming of parental resources stops when the child reaches 18.

New § 416.1204 is being added to explain the effects of a sponsor's resources on the eligibility of an alien. With the exception of certain resources excluded under other Federal statutes, a sponsor's resources are subject to the same exclusions that apply to an individual eligible for SSI. The remaining amount is reduced by an allocation for the sponsor or for the sponsor and spouse if they live together. (The amount of the allocation is equal to the applicable resource limit described in § 416.1205 for an eligible individual and an individual and spouse.) The balance of the sponsor's resources is deemed to the alien. The statute does not address resource exclusions for sponsors who are married to each other and living together. This section provides that the resource exclusion for each is the resource limit applicable to an eligible individual. SSA believes that, if INS treats the husband and wife as separate sponsors in those cases, they

should each receive the sponsor's exclusion.

In discussing resources excluded under other Federal statutes in § 416.1204, we cross-refer to the appendix of Subpart K for the listing of specific exclusions. As stated in the current regulations, the same exclusions that apply to income apply when the proceeds become resources. However, this does not include those listed in III (c) of the appendix to Subpart K.

The rest of § 416.1204 deals with the different types of sponsor-to-alien deeming situations; e.g., an alien with multiple sponsors or a person who sponsors more than one alien. The rules for deeming of resources in these situations are similar to the deeming of income rules discussed earlier.

Subpart R, Relationship

Subpart R, Relationship, explains when proof is necessary to establish family relationships. Section 416.1821 currently requires persons under age 21 and living with their parents to show us proof of marriage. This section is revised, because of the statutory change, to show that a child subject to parental deeming rules (rather than children under age 21) will be asked for proof of marriage if we have reason to believe the child is married. Section 416.1851 is revised to clarify which children are subject to deeming rules. Both §§ 416.1821 and 416.1851 cross-refer to the sections in other subparts that explain parent-to-child deeming of income and resources.

Future Regulations

These regulations describe the process of deeming a sponsor's income and resources to an alien and liability of a sponsor when there is an overpayment to an alien. Regulations will be prepared in the future to cover related provisions of the statute such as those dealing with the sponsor's responsibility to provide information and the sponsor's access to the appeals process.

Effective Date of Regulations

These regulations are effective on the first day of the month following publication in the **Federal Register.** This is because these regulations establish new rules for determining SSI eligibility and benefit amount. Since the eligibility and benefit amount factors are generally determined on the first day of every month, the effective date of the new rules should coincide with the date determinations are made.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. The costs of implementing section 1614(f)(2) of the Act as amended by section 203 of Pub. L. 96–265 that revises the parent-to-child deeming rules were estimated to have been $1 million, $4 million, and $9 million for the years 1981 through 1983, and to be $14 million for each year from 1984 through 1986. We expect the costs to stabilize at the 1984 level ($14 million). Implementing sections 1614(f)(3) and 1621 as added by section 504 of Pub. L. 96–265 that establishes sponsor-to-alien deeming was estimated to reduce program costs by $24 million in 1984 and $28 million in 1985. Medicaid costs were expected to decrease by $7 million in 1984 and $9 million in 1985. Administrative costs are estimated at less than $1 million per year. The actual SSI program savings effect has three parts: savings from reduced benefits for those awarded benefits who have deemed income; savings from denials for excess income and/or resources for those who would have been eligible; and savings from aliens discouraged from even applying for SSI because of the provision. Program data are available only for the first type of savings; it is determined to be less than $1 million per year since 1981. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These regulations impose no additional reporting and recordkeeping requirement requiring OMB clearance. SSA has clearance for the form (SSA–8150, OMB No. 0960–0128) on which beneficiaries report changes in income and on the form completed by parents or sponsors of aliens to allow us to determine deemable income (SSA–8010, OMB No. 0960–0124).

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplementary Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: March 10, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: March 10, 1987.

Otis R. Bowen,

Secretary, Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1614, 1621, 1631, 1633 of the Social Security Act, as amended; 49 Stat. 647, 86 Stat. 1465, 1466, 1471, 94 Stat. 471, 86 Stat. 1475, and 1478 ; U.S.C. 1302, 1381, 1381a, 1382, 1382c, 1382j, 1383 and 1383b.

2. Section § 416.535 is revised to read as follows:

§ 416.535 Underpayments and overpayments.

(a) *General.* When an individual receives SSI benefits of less than the correct amount, adjustment is effected as described in §§ 416.542 and 416.543. When an individual receives more than the correct amount of SSI benefits, adjustment is effected as described in § 416.570. Refund of overpayments is discussed in § 416.560 and waiver of recovery of overpayments is discussed in §§ 416.550 through 416.555.

(b) *Additional rules for eligible aliens and for their sponsors.* When an individual who is an alien is overpaid SSI benefits during the 3-year period in which deeming from a sponsor applies (see § 416.1160(a)(3)), the sponsor and the alien may be jointly and individually liable for repayment of the overpayment. The sponsor is liable for the overpayment if he or she failed to report correct information that affected the alien's eligibility or payment amount. This means information about the income and resources of the sponsor and, if they live together, of the sponsor's spouse. However, the sponsor is not liable for repayment if the sponsor was without fault or had good cause for failing to report correctly. A special rule that applies to adjustment of other benefits due the alien and the sponsor to recover an overpayment is described in § 416.570(b).

(c) *Sponsor without fault or good cause exists for failure to report.* Without fault or good cause will be found to exist if the failure to report was not willful. To establish willful failure, the evidence must show that the sponsor knowingly failed to supply pertinent information regarding his or her income and resources.

3. Section 416.550 is revised to read as follows:

§ 416.550 Waiver of adjustment or recovery—when applicable.

Waiver of adjustment or recovery of an overpayment of SSI benefits may be granted when (EXCEPTION: This section does not apply to a sponsor of an alien):

(a) The overpaid individual was without fault in connection with an overpayment, and

(b) Adjustment or recovery of such overpayment would either:

(1) Defeat the purpose of title XVI, or

(2) Be against equity or good conscience, or

(3) Impede efficient or effective administration of title XVI due to the small amount involved.

4. Section 416.570 is amended by revising the section heading, designating existing text as paragraph (a) and adding a heading, and adding a new paragraph (b) to read as follows:

§ 416.570 Adjustment-Overpayments.

(a) *General rule.* * * *

(b) *Exception to the general rule.* Adjustment to recover an overpayment of SSI benefits to an alien shall be made against any subsequent payment under the Social Security Act which is payable to the alien or to the sponsor (in cases which the overpayment was caused by the sponsor's failure to provide correct information) if the overpayment:

(1) Was made during the 3-year period in which the sponsor's income and resources (and those of the sponsor's spouse if they live together) may be deemed to the alien; and

(2) Was not otherwise repaid or recovered under § 416.560 or paragraph (a) of this section.

5. The authority citation for Subpart K of part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614, 1621, and 1631 of the Social Security Act as amended: Sec. 211 of Pub. L. 93–66; 49 Stat. 647 as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471; 94 Stat. 471, 86 Stat. 1475, 87 Stat. 154; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c, 1382j and 1383.

6. In section 416.1148, paragraphs (a) and (b)(2), are revised to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

(a) *The one-third reduction and deeming of income.* If you live in the household of your spouse, parent, essential person, or sponsor whose income can be deemed to you, the one-third reduction does not apply to you. The rules on deeming income are in §§ 416.1160 through 416.1169. However, if you live in another person's household as described in § 416.1131, and someone whose income can be deemed to you lives in the same household, we must apply both the one-third reduction and the deeming rules to you.

(b) *The presumed value rule and deeming of income.*

* * * * *

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any food, clothing, or shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

7. In § 416.1149, paragraph (c)(2)(ii) is revised to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

* * * * *

(c) * * *

(2) * * *

(ii) However, if you are a child under age 18, and your permanent living arrangement is with an ineligible parent or essential person (§ 416.222), we follow the rules in § 416.1148(b)(2). When you reach age 18, or if you are under age 18 and deeming does not apply, we consider the circumstances of your permanent living arrangement to value any in-kind support and maintenance you receive.

8. Section 416.1160 is revised to read as follows:

§ 416.1160 What is deeming of income.

(a) *General.* We use the term deeming to identify the process of considering another person's income to be your own. When the deeming rules apply, it does not matter whether the income of the other person is actually available to you. We must apply these rules anyway. There are four categories of individuals whose income may be deemed to you.

(1) *Ineligible spouse.* If you live in the same household with your ineligible spouse, we look at your spouse's income to decide whether we must deem some of it to you. We do this because we expect your spouse to use some of his or her income to take care of some of your needs.

(2) *Ineligible parent.* If you are a child to whom deeming rules apply (See § 416.1165), we look at your parent's income (and that of your parent's spouse) to decide whether we must deem some of it to be yours. We do this because we expect your parent to use some of his or her income to take care of your needs.

(3) *Sponsor of an alien.* If you are an alien who has a sponsor and you first apply for SSI benefits after September 30, 1980, we look at your sponsor's income to decide whether we must deem some of it to be yours. This rule applies for 3 years after you are admitted to the United States for permanent residence and regardless of whether you live in the same household as your sponsor. We deem your sponsor's income to you because your sponsor agreed to support you (signed an affidavit of support) as a condition of your admission to the United States. If two deeming rules could apply to you because your sponsor is also your ineligible spouse or parent who lives with you, we use the appropriate spouse-to-spouse or parent-to-child deeming rules instead of the sponsor-to-alien rules. If you have a sponsor and also have an ineligible spouse or parent who is not your sponsor and whose income can be deemed to you, both rules apply. If your sponsor is not your parent or spouse but is the ineligible spouse or parent of another SSI beneficiary, we use the sponsor-to-alien deeming rules for you and the appropriate spouse-to-spouse or parent-to-child deeming rules for the other SSI beneficiary.

(4) *Essential person.* If you live in the same household with your essential person (as defined in § 416.222), we must look at that person's income to decide whether we must deem some of it to you. We do this because we have increased your benefit to help meet the needs of your essential person.

(b) *When we deem.* We deem income to determine whether you are eligible for a benefit and to determine the amount of your benefit. However, we may consider this income in different months for each purpose.

(1) *Eligibility.* We consider the income of your ineligible spouse, ineligible parent, sponsor or essential person in the current month to determine whether you are eligible for SSI benefits for that month.

(2) *Amount of benefit.* We consider the income of your ineligible spouse, ineligible parent, sponsor, or essential person in the second month prior to the current month to determine your benefit amount for the current month. *Exceptions:* (i) To determine your benefit amount for the first month you are eligible or for a month after you have been ineligible for at least a month, we use the same countable income that we use to determine your eligibility. In the following month (the second month)

we use the same countable income that we used in the preceding month to determine your benefit amount. (ii) To determine the amount of your benefit in the current month, if there are certain changes in your situation which we list below, we use only your own countable income in a prior month, excluding any income deemed to you in that month from an ineligible spouse or parent. These changes are the death of your spouse or parent, your attainment of age 18, or your becoming subject to the $25 Federal benefit rate (§ 416.211(b)). (iii) To determine the amount of your benefit for the current month, we do not use income deemed from your essential person beginning with the month you can no longer qualify for the essential person increment (§ 416.413). We use only your own countable income in a prior month to determine the amount of your benefit for the current month.

(c) *Steps in deeming.* Although the way we deem income varies depending upon whether you are an eligible individual, an eligible child, an alien with a sponsor, or an individual with an essential person, we follow several general steps to determine how much income to deem.

(1) We determine how much earned and unearned income your ineligible spouse, ineligible parent, sponsor, or essential person has, and we apply the appropriate exclusions. (See § 416.1161(a) for exclusions that apply to an ineligible parent or spouse, and § 416.1161(b) for those that apply to an essential person or to a sponsor.)

(2) Before we deem income to you from either your ineligible spouse or ineligible parent, we allocate an amount for each ineligible child in the household. (Allocations for ineligible children are explained in § 416.1163(b) and § 416.1165(b).) We also allocate an amount for each eligible alien who is subject to deeming from your ineligible spouse or parent as a sponsor. (Allocations for eligible aliens are explained in § 416.1163(c).)

(3) We then follow the deeming rules which apply to you.

(i) For deeming income from your ineligible spouse, see § 416.1163.

(ii) For deeming income from your ineligible parent, see § 416.1165.

(iii) For deeming income from your ineligible spouse when you also have an eligible child, see § 416.1166.

(iv) For deeming income from your sponsor if you are an alien, see § 416.1166a.

(v) For deeming income from your essential person, see § 416.1168. The rules on when we stop deeming income from your essential person are in § 416.1169.

(vi) For provisions on change in status involving couples see § 416.1163(f) and for those involving parents see § 416.1165(g).

(d) *Definitions for deeming purposes.* For deeming purposes—

"Date of admission to" or "date of entry into the United States" means the date established by the Immigration and Naturalization Service as the date the alien is admitted for permanent residence.

"Dependent" means the same thing as it does for Federal income tax purposes—we mean someone for whom you are entitled to take a deduction on your personal income tax return. *Exception:* An alien and an alien's spouse are not considered to be dependents of the alien's sponsor for the purposes of these rules.

"Essential person" means someone who was identified as essential to your welfare under a State program that preceded the SSI program. (See §§ 416.220 through 416.223 for the rules on essential persons.)

"Ineligible child" means your natural child or adopted child, or the natural or adopted child of your spouse, or the natural or adopted child of your parent or of your parent's spouse (as the terms "child" and "spouse" are defined in § 416.1101), who is under age 21, lives in the same household with you, and is not eligible for SSI benefits.

"Ineligible parent" means a natural or adoptive parent, or the spouse (as defined in § 416.1101) of a natural or adoptive parent, who lives with you and is not eligible for SSI benefits. The income of ineligible parents affects your benefit only if you are a child under age 18.

"Ineligible spouse" means someone who lives with you as your husband or wife and is not eligible for SSI benefits.

"Sponsor" means an individual (but not an organization such as the congregation of a church or a service club, or an employer who only guarantees employment for an alien upon entry but does not sign an affadavit of support) who signs an affidavit of support agreeing to support you as a condition of your admission as an alien for permanent residence in the United States.

9. Section 416.1161 is amended by revising the introductory text, by revising paragraph (b), and by adding new paragraph (d) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, sponsor of an alien, and essential person for deeming purposes.

The first step in deeming is determining how much income your ineligible spouse, ineligible parent (if you are a child), your sponsor (if you are an alien), or your essential person, has. We do not always include all of their income when we determine how much income to deem. In this section we explain the rules for determining how much of their income is subject to deeming. As part of the process of deeming income from your ineligible spouse or parent, we must determine the amount of income of any ineligible children in the household.

* * * * *

(b) *For an essential person or for a sponsor of an alien.* We include all the income (as defined in § 416.1102) of an essential person or of a sponsor of an alien and of the spouse of the sponsor (if the sponsor and spouse live in the same household) except for home energy assistance described in §§ 416.1155 and 416.1156, and income excluded under Federal laws other than the Social Security Act. For information on these laws see the appendix to this subpart.

* * * * *

(d) *For an eligible alien.* Although we do not deem any income to you from an eligible alien, if your ineligible spouse or ineligible parent is also a sponsor of an eligible alien, we reduce the alien's allocation if he or she has income (see § 416.1163(c)(2)). For this purpose exclude any of the alien's income listed in paragraph (a) of this section.

10. In § 416.1163, the introductory text of paragraph (b) and paragraph (b)(1) are revised, paragraphs (c), (d), (e) and (f) are revised and redesignated as paragraphs (d), (e), (f), and (g), and a new paragraph (c) is added, to read as follows. The introductory paragraph is republished.

§ 416.1163 How we deem income to you from your ineligible spouse.

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order:

* * * * *

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. *Exception:* We do not allocate for ineligible children who are receiving public income-maintenance payments (see § 416.1142(a)).

(1) The allocation for each ineligible child is the difference between the Federal benefit rate for an eligible

couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to determine the amount of a benefit for a current month is based on the Federal benefit rate that applied in the second prior month unless one of the exceptions in § 416.1160(b)(2) applies.

* * * * *

(c) *Allocations for aliens sponsored by your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and who have income deemed from your ineligible spouse.

(1) The allocation for each alien who is sponsored by and who has income deemed from your ineligible spouse is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to compute your benefit for a current month is based on the Federal benefit rate that applied in the second prior month (unless the current month is the first or second month of eligibility or re-eligibility as explained in §§ 416.420(a) and (b) (2) and (3)).

(2) Each alien's allocation is reduced by the amount of his or her own income as described in § 416.1161(d).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations, we deduct the balance from your ineligible spouse's earned income.

(d) *Determining your eligibility for SSI.* (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple.

(e) *Determining your SSI benefit.* (1) In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

(2) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the lesser of the amount computed under the rules in paragraph (d)(2) of this section or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate.

(f) *Special rules for couples when a change in status occurs.* We have special rules to determine how to deem your spouse's income to you when there is a change in your situation.

(1) *Ineligible spouse becomes eligible.* If your ineligible spouse becomes eligible for SSI benefits, we treat both of you as newly eligible. Therefore, your eligibility and benefit amount for the first month you are an eligible couple will be based on your income in that month. In the second month, your benefit amount will also be based on your income in the first month.

(2) *Spouses separate or divorce.* If you separate from your ineligible spouse or your marriage to an ineligible spouse ends by divorce, we do not deem your ineligible spouse's income to you to determine your eligibility for benefits beginning with the first month following the event. If you remain eligible, we determine your benefit amount by following the rule in paragraph (e) of this section provided deeming from your spouse applied in the prior month.

(3) *Eligible individual begins living with an ineligible spouse.* If you begin to live with your ineligible spouse, we deem your ineligible spouse's income to you in the first month thereafter to determine whether you continue to be eligible for SSI benefits. If you continue to be eligible, we follow the rule in § 416.420(a) to determine your benefit amount.

(4) *Ineligible spouse dies.* If your ineligible spouse dies, we do not deem your spouse's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(5) *You become subject to the $25 Federal benefit rate.* If you become a resident of a medical care facility and the $25 Federal benefit rate applies, we do not deem your ineligible spouse's income to you to determine your eligibility for SSI benefits beginning with the first month for which the $25 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the $25 Federal benefit rate applies, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(g) *Examples.* These examples show how we deem income from an ineligible spouse to an eligible individual in cases which do not involve any of the exceptions in § 416.1160(b)(2). The income, the income exclusions, and the allocations are monthly amounts. The Federal benefit rates used are those effective January 1, 1986.

Example 1. In September 1986, Mr. Todd, an aged individual, lives with his ineligible spouse, Mrs. Todd, and their ineligible child, Mike. Mr. Todd has a Federal benefit rate of $336 per month. Mrs. Todd receives $252 unearned income per month. She has no earned income and Mike has no income at all. Before we deem any income, we allocate to Mike $168 (the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual). We subtract the $168 allocation from Mrs. Todd's $252 unearned income, leaving $84. Since Mrs. Todd's $84 remaining income is not more than $168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we do not deem any income to Mr. Todd. Instead, we compare only Mr. Todd's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Mr. Todd's own countable income

is less than his Federal benefit rate, he is eligible. To determine the amount of his benefit, we determine his countable income, including any income deemed from Mrs. Todd, in July and subtract this income from the appropriate Federal benefit rate for September.

Example 2. In September 1986, Mr. Jones, a disabled individual, lives with his ineligible spouse, Mrs. Jones, and ineligible child, Christine. Mr. Jones and Christine have no income. Mrs. Jones has earned income of $401 a month and unearned income of $252 a month. Before we deem any income, we allocate $168 to Christine. We take the $168 allocation from Mrs. Jones' $252 unearned income, leaving $84 in unearned income. Since Mrs. Jones' total remaining income ($84 unearned plus $401 earned) is more than $168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we compute the combined countable income as we do for a couple. We apply the $20 general income exclusion to the unearned income, reducing it further to $64. We then apply the earned income exclusion ($65 plus one-half the remainder) to Mrs. Jones' earned income of $401, leaving $168. We combine the $64 countable unearned income and $168 countable earned income, and compare it ($232) with the $504 September Federal benefit rate for a couple, and determine that Mr. Jones is eligible. Since Mr. Jones is eligible, we determine the amount of his benefit by subtracting his countable income in July (including any deemed from Mrs. Jones) from September's Federal benefit rate for a couple.

Example 3. In September 1986, Mr. Smith, a disabled individual, lives with his ineligible spouse, Mrs. Smith, who earns $201 per month. Mr. Smith receives a pension (unearned income) of $100 a month. Since Mrs. Smith's income is greater than $168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we deem all of her income to be available to both Mr. and Mrs. Smith and compute the combined countable income for the couple. We apply the $20 general income exclusion to Mr. Smith's $100 unearned income, leaving $80. Then we apply the earned income exclusion ($65 plus one-half of the remainder) to Mrs. Smith's $201, leaving $68. This gives the couple total countable income of $148. This is less than the $504 September Federal benefit rate for a couple, so Mr. Smith is eligible based on deeming. Since he is eligible, we determine the amount of his benefit based on his income (including any deemed from Mrs. Smith) in July.

Example 4. In September 1986, Mr. Simon has a disabled spouse, Mrs. Simon, and has sponsored an eligible alien, Mr. Ollie. Mrs. Simon has monthly unearned income of $100 and Mr. Simon has earned income of $405. From Mr. Simon's earned income we allocate to Mr. Ollie $168, which is the difference between the Federal benefit rate for an eligible couple and the rate for an eligible individual. Mr. Ollie has no other income. This reduces Mr. Simon's earned income from $405 to $237. Since $237 is more than $168 (the difference between the Federal benefit rate for an eligible couple and the rate for an eligible individual), we deem all of Mr. Simon's remaining income to be available to Mr. and Mrs. Simon and compute the combined countable income for the couple. We apply the $20 general income exclusion to Mrs. Simon's unearned income, leaving $80. Then we apply the general earned income exclusion ($65 plus one-half the remainder) to Mr. Simon's $237 earned income, leaving $86. This gives the couple total income of $166 ($80+$86.). The $166 is less than the $504 Federal benefit rate for a couple so Mrs. Simon would be eligible based on deeming. Since she is eligible, we determine the amount of her benefit based on her income (including any deemed from Mr. Simon) in July . For the way we deem Mr. Simon's income to Mr. Ollie, see the rules in § 416.1166a.

11. Section 416.1165 is revised to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent.

If you are a child living with your parents, we apply the deeming rules to you through the month in which you reach age 18. We follow the rules in paragraphs (a) through (e) of this section to determine your eligibility. To determine your benefit amount, we follow the rules in paragraph (f) of this section. The rules in paragraph (g) of this section apply to changes in your family situation.

(a) *Determining your ineligible parent's income.* We first determine how much current monthly earned and unearned income your ineligible parents have, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Allocations for aliens who are sponsored by and have income deemed from your ineligible parent.* We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from your ineligible parent as described in § 416.1163(c).

(d) *Allocations for your ineligible parents.* We next deduct allocations for your parents. These vary depending on the type of income they have. We do not allocate for a parent who is receiving public income-maintenance payments (see § 416.1142(a)).

(1) *All parental income is earned.* If your parents have only earned income, we allocate $85 (the sum of the $20 general income exclusion and the $65 earned income exclusion) plus—

(i) Double the Federal benefit rate for the month for a couple if both parents live with you; or

(ii) Double the Federal benefit rate for the month for an individual if only one parent lives with you.

(2) *All parental income is unearned.* If your parents have only unearned income, we allocate $20 (the amount of the general income exclusion) plus—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(3) *Parental income is both earned and unearned.* If your parents have both earned and unearned income, we allocate for them as follows. We first deduct $20 from their combined unearned income. If they have less than $20 in unearned income we subtract the balance of the $20 from their combined earned income. Next, we subtract $65 plus one-half the remainder of their earned income. We total the remaining earned and unearned income, and subtract—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(e)(1) *When you are the only eligible child.* If you are the only eligible child in the household, we deem any of your parents' current monthly income that remains to be your unearned income. We combine it with your own unearned income and apply the exclusions in § 416.1124 to determine your countable unearned income in the month. We add this to any countable earned income you

may have and subtract the total from the Federal benefit rate for an individual to determine whether you are eligible for benefits.

(2) *When you are not the only eligible child.* If your parents have more than one eligible child under age 18 in the household, we divide the parental income to be deemed equally among those eligible children.

(3) *When one child's income makes that child ineligible.* We do not deem more income to an eligible child than the amount which, when combined with the child's own income, reduces his or her SSI benefit to zero. (For purposes of this paragraph, an SSI benefit includes any federally administered State supplement). If the share of parental income that would be deemed to a child makes that child ineligible (reduces the amount to zero) because that child has other countable income, we deem any remaining parental income to other eligible children under age 18 in the household in the manner described in paragraph (e)(2) of this section.

(f) *Determining your SSI benefit.* In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible parents' income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility) we deem your ineligible parents' income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible parents' income in that month to determine whether you are eligible for a benefit but we again use your countable income (including any that was deemed to you) in the first month to determine the amount of your benefit.

(g) *Special rules for a change in status.* We have special rules to begin or stop deeming your ineligible parents' income to you when a change in your family situation occurs.

(1) *Ineligible parent becomes eligible.* If your ineligible parent becomes eligible for SSI benefits, there will be no income to deem from that parent to you to determine your eligibility for SSI benefits beginning with the month your parent becomes eligible. However, to determine your benefit amount, we follow the rule in § 416.420.

(2) *Eligible parent becomes ineligible.* If your eligible parent becomes ineligible, we deem your parents' income to you in the first month of the parents' ineligibility to determine whether you continue to be eligible for SSI benefits. However, if you continue to be eligible, in order to determine your benefit amount, we follow the regular rule of counting your income in the second month prior to the current month.

(3) *Ineligible parent dies.* If your ineligible parent dies, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see § 416.1160(b)(2)(B)). However, if you live with two ineligible parents, and one dies, we continue to deem income from the surviving parent.

(4) *Ineligible parent and you no longer live in the same household.* If your ineligible parent and you no longer live in the same household, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the first month following the month in which one of you leaves. However (if you continue to be eligible), to determine your benefit amount we follow the rule in § 416.420 of counting your income including income deemed from your parent in the second month prior to the current month.

(5) *Ineligible parent and you begin living in the same household.* If your ineligible parent and you begin living in the same household, we consider that parent's income to determine whether you continue to be eligible for SSI benefits beginning with the month following the month of change. However (if you continue to be eligible), to determine your benefit amount, we follow the rule in § 416.420 of counting your income in the second month prior to the current month.

(6) *You become subject to the $25 Federal benefit rate.* If you become a resident of a medical care facility and the $25 Federal benefit rate applies, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits beginning with the first month for which the $25 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the $25 Federal benefit rate applies, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent.

(7) *You attain age 18.* In the month following the month in which you attain age 18 and thereafter, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits. In determining your benefit amount beginning with the month following your attainment of age 18, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see § 416.1160(b)(2)(B)). Your income for the current and subsequent months must include any income in the form of cash or in-kind support and maintenance provided by your parents. If you attain age 18 and stop living in the same household with your ineligible parent, these rules take precedence over paragraph (g)(4) of this section which requires continued use of deemed income in the benefit computation for 2 months following the month you no longer live in the same household.

(h) *Examples.* These examples show how we deem an ineligible parent's income to an eligible child when none of the exceptions in § 416.1160(b)(2) applies. The income, the income exclusions, and the allocations are monthly amounts. The Federal benefit rates are those effective January 1, 1986.

Example 1. Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of $285 per month and his father earns $955 per month. Henry and his brother have no income. First, we allocate $168 for Henry's brother from the unearned income of $285. This leaves $117 in unearned income. Since the remaining parental income is both earned and unearned, we reduce the unearned income further by $20, leaving $97. We then reduce the $955 of earned income by $65 plus one-half of the remainder, leaving $445. From the total remaining income of $542, we subtract $504 (the Federal benefit rate for a couple), as the allocation for the parents, leaving $38 to be deemed as Henry's unearned income. We then apply Henry's $20 general income exclusion which reduces his countable income to $18. Since that amount is less than the $336 Federal benefit rate for an individual, Henry is eligible. We determine his benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month.

Example 2. James and Tony are disabled children who live with their mother. The children have no income but their mother receives $416 a month in unearned income. Since all the mother's income is unearned, the amount we allocate for her needs is $356 (the $336 Federal benefit rate for an individual, plus the $20 general income exclusion). After subtracting this allocation from her $416, we divide the remaining $60 equally between the two children ($30 each) as unearned income. We then apply the $20 general income exclusion leaving each child

with $10 countable income. The $10 income is less than the $336 Federal benefit rate for an individual, so the children are eligible. We determine each child's benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month.

Example 3. Mrs. Jones is the ineligible parent of two disabled children, Beth and Linda, and has sponsored an eligible alien, Mr. Sean. Beth, Linda, and Mr. Sean have no income; Mrs. Jones has unearned income of $850. We first reduce the mother's income by an allocation of $168 for Mr. Sean which leaves a balance of $682. Next, we allocate $356 for the mother's own needs (the $20 general income exclusion plus $336, the amount of the Federal benefit rate payable to an individual). The balance of $326 ($682 − $356 = $326) to be deemed is divided equally between Beth and Linda. Each now has unearned income of $163 from which we deduct the $20 general income exclusion ($163 − $20 = $143). Since this is less than the $336 Federal benefit rate for an individual, the girls are eligible. We will use income in a prior month to compute their benefits if retrospective accounting applies. (For the way we deem the mother's income to Mr. Sean, see examples No. 3 and No. 4 in § 416.1166a.)

12. In § 416.1166 existing paragraphs (c), (d), and (e) are redesignated (d), (e), and (f), a new paragraph (c) is added, and the introductory paragraph is revised to read as follows:

§ 416.1166 How we deem income to you and your eligible child from your ineligible spouse.

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child. For the purpose of this section, SSI benefits include any federally administered State supplement. We then follow the rules in § 416.1165(e) to determine the child's eligibility for SSI benefits and in § 416.1165(f) to determine the benefit amount.

* * * * *

(c) *Allocations for aliens who are sponsored by and have income deemed from your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from your ineligible spouse as described in § 416.1163(c).

* * * * *

13. Section 416.1166a is added to read as follows:

§ 416.1166a How we deem income to you from your sponsor if you are an alien.

Before we deem your sponsor's income to you if you are an alien, we determine how much earned and unearned income your sponsor has under § 416.1161(b). We then deduct allocations for the sponsor and the sponsor's dependents. This is an amount equal to the Federal benefit rate for an individual for the sponsor (or for each sponsor even if two sponsors are married to each other and living together) plus an amount equal to one-half the Federal benefit rate for an eligible individual for each dependent of the sponsor. An ineligible dependent's income is not subtracted from the sponsor's dependent's allocation. We deem the balance of the income to be your unearned income.

(a) *If you are the only alien applying for or already eligible for SSI benefits who has income deemed to you from your sponsor.* If you are the only alien who is applying for or already eligible for SSI benefits and who is sponsored by your sponsor, all the deemed income is your unearned income.

(b) *If you are not the only alien who is applying for or already eligible for SSI benefits and who has income deemed from your sponsor.* If you and other aliens applying for or already eligible for SSI benefits are sponsored by the same sponsor, we deem the income to each of you as though you were the only alien sponsored by that person. The income deemed to you becomes your unearned income.

(c) *When you are an alien and income is no longer deemed from your sponsor.* If you are an alien and have had your sponsor's income deemed to you, we stop deeming the income with the month in which the third anniversary of your admission into the United States occurs.

(d) *When sponsor deeming rules do not apply to you if you are an alien.* If you are an alien, we do not apply the sponsor deeming rules to you if—

(1) *You are a refugee.* You are a refugee admitted to the United States as the result of application of one of three sections of the Immigration and Nationality Act: (1) Section 203(a)(7), effective before April 1, 1980; (2) Section 207(c)(1), effective after March 31, 1980; or (3) Section 212(d)(5);

(2) *You have been granted asylum.* You have been granted political asylum by the Attorney General of the United States; or

(3) *You become blind or disabled.* If you become blind or disabled as defined in § 416.901 (at any age) after your admission to the United States, we do not deem your sponsor's income to you to determine your eligibility for SSI benefits beginning with the month in which your disability or blindness begins. However, to determine your benefit payment, we follow the rule in § 416.420 of counting your income in the second month prior to the current month.

(e) *Examples.* These examples show how we deem a sponsor's income to an eligible individual who is an alien when none of the exceptions in § 416.1160(b)(2) applies. The income, income exclusions, and the benefit rates are in monthly amounts. The Federal benefit rates are those effective January 1, 1986.

Example 1. Mr. John, an alien who has no income, has been sponsored by Mr. Herbert who has monthly earned income of $1,300 and unearned income of $70. Mr. Herbert's wife and three children have no income. We add Mr. Herbert's earned and unearned income for a total of $1,370 and apply the allocations for the sponsor and his dependents. Allocations total $1,008. These are made up of $336 (the Federal benefit rate for an eligible individual) for the sponsor, plus $672 (one-half the Federal benefit rate for an eligible individual, $168 each) for Mr. Herbert's wife and three children. The $1,008 is subtracted from Mr. Herbert's total income of $1,370 which leaves $362 to be deemed to Mr. John as his unearned income. Mr. John's only exclusion is the $20 general income exclusion. Since the $342 balance exceeds the $336 Federal benefit rate, Mr. John is ineligible.

Example 2. Mr. and Mrs. Smith are an alien couple who have no income and who have been sponsored by Mr. Hart. Mr. Hart has earned income of $1,350 and his wife, Mrs. Hart, who lives with him, has earned income of $150. Their two children have no income. We combine Mr. and Mrs. Hart's income ($1,350 + $150 = $1,500). We deduct the allocations of $336 for Mr. Hart (the Federal benefit rate for an individual) and $504 for Mrs. Hart and the two children ($168 or one-half the Federal benefit rate for an eligible individual for each), a total of $840. The allocations ($840) are deducted from the total $1,500 income which leaves $660. This amount must be deemed independently to Mr. and Mrs. Smith. Mr. and Mrs. Smith would qualify for SSI benefits as a couple in the amount of $504 if no income had been deemed to them. The $1,320 ($660 each to Mr. and Mrs. Smith) deemed income is unearned income to Mr. and Mrs. Smith and is subject to the $20 general income exclusion, leaving $1,300. This exceeds the couple's rate of $504 so Mr. and Mrs. Smith are ineligible for SSI benefits.

Example 3. Mr. Bert and Mr. Davis are aliens sponsored by their sister Mrs. Jean, who has earned income of $800. She also receives $250 as survivors' benefits for her two minor children. We do not consider the $250 survivors' benefits to be Mrs. Jean's income because it is the children's income. We exclude $336 for Mrs. Jean (the Federal benefit rate for an individual) plus $336 ($168, one-half the Federal benefit rate for an eligible individual for each child), a total of $672. We subtract the $672 from Mrs. Jean's income of $800, which leaves $128 to be deemed to Mr. Bert and Mr. Davis. Each of the brothers is liable for rent in the boarding house (a commercial establishment) where they live. Each lives in his own household, receives no in-kind support and maintenance,

and is eligible for the Federal benefit rate of $336. The $128 deemed income is deemed both to Mr. Bert and to Mr. Davis. As a result, each has countable income of $108 ($128 minus the $20 general income exclusion). This is less than $336, the Federal benefit rate for an individual, so that both are eligible for SSI. We use their income in a prior month to determine their benefit payments.

Example 4. The same situation applies as in example 3 except that one of Mrs. Jean's children is disabled and eligible for SSI benefits. The eligibility of the disabled child does not affect the amount of income deemed to Mr. Bert and Mr. Davis since the sponsor-to-alien and parent-to-child rules are applied independently. The child's countable income is computed under the rules in § 416.1165.

14. The appendix following Subpart K is amended by revising paragraph (c) in category II, deleting paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b) in category III, revising category IV and revising paragraph (a) in category V to read as follows:

Appendix—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act

* * * * *

II. Housing and Utilities * * *

(c) Value of any assistance paid with respect to a dwelling unit under—

(1) The United States Housing Act of 1937;

(2) The National Housing Act;

(3) Section 101 of the Housing and Urban Development Act of 1965; or

(4) Title V of the Housing Act of 1949.

Note.—This exclusion applies to a sponsor's income only if the alien is living in the housing unit for which the sponsor receives the housing assistance.

* * * * *

IV. Native Americans

(a) Revenues from the Alaska Native Fund paid under section 21(a) of the Alaska Native Claims Settlement Act, Pub. L. No. 92–203 (85 Stat. 713, 43 U.S.C. 1620(a)).

Note.—This exclusion does not apply in deeming income from sponsors to aliens.

(b) Indian tribes—Distribution of per capita judgment funds to members of—

(1) The Blackfeet and Gros Ventre Tribes under section 4 of Pub. L. No. 92–254 (86 Stat. 265, 25 U.S.C. 1264) and under section 6 of Pub. L. No. 97–408 (96 Stat. 2036);

(2) The Papago Tribe of Arizona Indians under section 8(d) of Pub. L. No. 97–408 (96 Stat. 2038);

(3) The Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 40–K under section 6 of Pub. L. No. 94–540 (90 Stat. 2504);

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(4) Tribes or groups under section 7 of Pub. L. No. 93–134 (87 Stat. 468, 25 U.S.C. 1407);

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(5) The Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation as authorized by section 2 of Pub. L. No. 95–433 (92 Stat. 1047, 25 U.S.C. 609c–1);

(6) The Wyandot Tribe of Indians under section 6 of Pub. L. No. 97–371 (96 Stat. 1814, 42 U.S.C. 1305);

(7) The Shawnee Tribe of Indians under section 7 of Pub. L. No. 97–372 (96 Stat. 1816, 42 U.S.C. 1305);

(8) The Indians of the Miami Tribe of Oklahoma and Indiana under section 7 of Pub. L. No. 97–376 (96 Stat. 1829, 42 U.S.C. 1305);

(9) The Clallam Tribe of Indians under section 6 of Pub. L. No. 97–402 (96 Stat. 2021);

(10) The Pembina Chippewa Indians under section 9 of Pub. L. No. 97–403 (96 Stat. 2025);

(11) The Confederated Tribes of the Warm Springs Reservation under section 4 of Pub. L. No. 97–436 (96 Stat. 2284);

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(12) The Red Lake Band of Chippewa Indians under section 3 of Pub. L. No. 98–123 (97 Stat. 816); and

(13) The Assiniboine Tribe of Fort Peck Montana under section 5 of Pub. L. No. 98–124 (97 Stat. 818, 42 U.S.C. 1305) and the Assiniboine Tribe of Fort Belknap under section 5 of Pub. L. No. 98–124 (97 Stat. 818, 42 U.S.C. 1305) and section 6 of Pub. L. No. 97–408 (96 Stat. 2036).

(c) Receipts from land held in trust by the Federal government and distributed to members of certain Indian tribes under section 6 of Pub. L. No. 94–114 (89 Stat. 579).

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(1) The Pueblo of Santa Ana Indians of New Mexico under section 6 of Pub. L. No. 95–498 (92 Stat. 1677, 42 U.S.C. 1305);

(2) The Pueblo of Zia Indians of New Mexico under section 6 of Pub. L. No. 95–499 (92 Stat. 1680, 42 U.S.C. 1305); and

(3) The Shoshone and Arapahoe Tribes of the Wind River Reservation of Wyoming under section 2 of Pub. L. No. 98–64 (97 Stat. 365, 25 U.S.C. 117).

(d) Revenues from the Maine Indian Claims Settlement Fund and the Maine Indian Land Acquisition Fund paid under section 5 of the Maine Indian Claims Settlement Act of 1980, Pub. L. No. 96–420 (94 Stat. 1796, 25 U.S.C. 1728(c)).

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

V. Other

(a) Compensation provided volunteers in the foster grandparents program and other similar programs, unless determined by the Director of the Action Agency to constitute the minimum wage, under sections 404(g) and 418 of the Domestic Volunteer Service Act of 1973 (87 Stat. 409, 413), as amended by Pub. L. No. 96–143; (93 Stat. 1077); 42 U.S.C. 5044(g) and 5058).

Note.—This exclusion does not apply to the income of sponsors of aliens.

* * * * *

15. The authority citation for Subpart L of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631(d), 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 94 Stat. 471, 86 Stat. 1476; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383(d), unless otherwise noted.

16. In § 416.1202, paragraph (b) is revised to read as follows:

§ 416.1202 Deeming of resources.

* * * * *

(b) *Child under age 18.* In the case of a child (defined in § 416.1101) who is under age 18, the child's resources will be deemed to include resources of ineligible parents who live in the same household. Deeming of a parents' resources does not apply the month after the month the child reaches age 18. The resources of parents are subject to the same exclusions that apply to an eligible individual or couple (see §§ 416.1205 through 416.1237) before any amount of their resources is deemed to the child. For purposes of this section, a parent may be a natural or adoptive parent or the spouse of a parent.

* * * * *

17. Section 416.1204 is added to read as follows:

§ 416.1204 Deeming of resources of the sponsor of an alien.

The resources of an alien who first applies for SSI benefits after September 30, 1980, are deemed to include the resources of the alien's sponsor for 3 years after the alien's date of admission into the United States. The "date of admission" is the date established by the Immigration and Naturalization Service as the date of admission for permanent residence. The resources of the sponsor's spouse are included if the sponsor and spouse live in the same household. Deeming of these resources applies regardless of whether the alien and sponsor live in the same household and regardless of whether the resources are actually available to the alien. For rules that apply in specific situations, see § 416.1166a(d).

(a) *Exclusions from the sponsor's resources.* Before we deem a sponsor's resources to an alien we exclude the same kinds of resources that are excluded from the resources of an individual eligible for SSI benefits. The applicable exclusions from resources are explained in §§ 416.1210 (paragraphs (a) through (i) and (k)) through 416.1237. For resources excluded by Federal statutes other than the Social Security Act, as applicable to the resources of sponsors deemed to aliens, see the

appendix to Subpart K, Income. We next allocate for the sponsor or for the sponsor and spouse (if living together). (The amount of the allocation is the applicable resource limit described in § 416.1205 for an eligible individual and an individual and spouse.)

(b) *An alien sponsored by more than one sponsor.* The resources of an alien who has been sponsored by more than one person are deemed to include the resources of each sponsor.

(c) *More than one alien sponsored by one individual.* If more than one alien is sponsored by one individual the deemed resources are deemed to each alien as if he or she were the only one sponsored by the individual.

(d) *Alien has a sponsor and a parent or a spouse with deemable resources.* Resources may be deemed to an alien from both a sponsor and a spouse or parent (if the alien is a child) provided that the sponsor and the spouse or parent are not the same person and the conditions for each rule are met.

(e) *Alien's sponsor is also the alien's ineligible spouse or parent.* If the sponsor is also the alien's ineligible spouse or parent who lives in the same household, the spouse-to-spouse or parent-to-child deeming rules apply instead of the sponsor-to-alien deeming rules. If the spouse or parent deeming rules cease to apply, the sponsor deeming rules will begin to apply. The spouse or parent rules may cease to apply if an alien child reaches age 18 or if either the sponsor who is the ineligible spouse or parent, or the alien moves to a separate household.

(f) *Alien's sponsor also is the ineligible spouse or parent of another SSI beneficiary.* If the sponsor is also the ineligible spouse or ineligible parent of an SSI beneficiary other than the alien, the sponsor's resources are deemed to the alien under the rules in paragraph (a), and to the eligible spouse or child under the rules in §§ 416.1202, 1205, 1234, 1236, and 1237.

18. The authority citation for Subpart R of part 416 is revised to read as follows:

Authority: Sec. 1102, 1614 (b), (c), (d), and 1631(d)(1) of the Social Security Act as amended, 49 Stat. 647, 86 Stat. 1473 and 1476; 42 U.S.C. 1302, 1382c (b), (c), and (d) and 1383(d)(1).

19. Section 416.1821 is amended by revising paragraphs (a) and (b) to read as follows:

§ 416.1821 Showing that you are married when you apply for SSI.

(a) *General Rule: Proof is unnecessary.* If you tell us you are married we will consider you married unless we have information to the contrary. We will also consider you married, on the basis of your statement, if you say you are living with an unrelated person of the opposite sex and you both lead people to believe you are married. However, if we have information contrary to what you tell us, we will ask for evidence as described in paragraph (c).

(b) *Exception: If you are a child to whom parental deeming rules apply.* If you are a child to whom the parental deeming rules apply and we receive information from you or others that you are married, we will ask for evidence of your marriage. The rules on deeming parental income are in §§ 416.1165 and 416.1166. The rules on deeming of parental resources are in § 416.1202.

* * * * *

20. Section 416.1851(c) is revised to read as follows. The introductory paragraph is republished for reader convenience.

§ 416.1851 Effects of being considered a child.

If we consider you to be child for SSI purposes, the rules in this section apply when we determine your eligibility for SSI and the amount of your SSI benefits.

* * * * *

(c) If you are under age 18 and live with your parent or stepparent who is not eligible for SSI benefits, we consider (deem) part of his or her income and resources to be your own. Sections 416.1165 and 416.1166 explain the rules and the exception to the rules on deeming your parent's income to be yours, and § 416.1202 explains the rules and the exception to the rules on deeming your parent's resources to be yours.

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SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1621, 1630,1633, 1648, and 1656

Registrant Processing

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) are revised to assure greater fairness and efficiency in the processing of registrants.

EFFECTIVE DATE: March 20, 1987.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435. Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION: These amendments to Selective Service Regulations are published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These regulations implement the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

Analysis of Comments

The proposed amendments to Selective Service Regulations were published in the **Federal Register** on December 10, 1986 (51 FR 44485) for public comment. Ten cards or letters of comment were received during the comment period which expired February 9, 1987. None of the cards or letters of comment received was from a person who claimed to be or otherwise could be identified as a registrant of the Selective Service System. For convenience each letter or card will be referred to as a comment.

Many comments addressed matters beyond the scope of the proposed amendments to Selective Service Regulations. Many of such comments reflected disagreement with or proposals for change in the Military Selective Service Act. Consideration of possible amendments to the Military Selective Service Act is not currently being given. The proposed amendments to Selective Service Regulations are based on the assumption that if and when inductions are resumed that will occur without change in the Military Selective Service Act other than with respect to the date July 1, 1973 when general induction authority expired.

Several commentators appeared to fail to appreciate that Class 1-O identifies registrants who, under section 6(j) of the Military Selective Service Act, are entitled to perform civilian work in lieu of induction. Thus, for a registrant to be entitled to perform civilian work (alternative service) he must be qualified for induction.

Comments received prompted several changes in the regulations as proposed for public comment. The introductory clause in paragraphs 6 and 8 is changed by substituting "revised" for "added." In § 1630.16(b) the language is clarified. In § 1633.1(f) and 1640.3(c) Class 4-A is inserted in the enumeration. In § 1656.2 postponement of the reporting date of an order to perform alternative service is also made available because of religious holidays of the religion of which a registrant is a member and entitlement to the statutory student postponement is

made explicit. A proposed Part 1698—Advisory Opinions will be published later for public comment.

Determinations

As required by Executive Order 12291, I have determined that these regulations are not "Major" rules and therefore do not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96—354.94 Stat. 1164, 5 U.S.C. 601—612), I have determined that these regulations do not have a significant economic impact on a substantial number of small entities.

Certificate

Whereas, on December 10, 1986, the Director of Selective Service published a Notice of Proposed Amendments of Selective Service Regulations at 51 FR 44485; and whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public (summarized above) have been received and considered; and I certify that I have requested the view of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended [50 App. U.S.C. section 451 et seq.] and Executive Order 11623 of October 12, 1971, the Selective Service Regulations constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, as stated below.

List of Subjects

32 CFR Part 1602

Selective Service System.

32 CFR Part 1605

Government employees. Selective Service System, organizational and function.

32 CFR Parts 1621, 1630, 1633, and 1648

Selective Service System.

32 CFR Part 1656

Conscientious objector, Selective Service System.

Dated: March 17, 1987.

Wilfred L. Ebel,

Acting Director.

The regulations are:

PART 1602—DEFINITIONS

1. The authority citation for Part 1602 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

2. Section 1602.2 is revised to read:

§ 1602.2 Administrative classification.

A reclassification action relating to a registrant's claim for Class 1–C, 1–D–D, 1–D–E, 1–H, 1–O–S, 1–W, 4–A, 4–B, 4–C, 4–F, 4–G, 4–T, or 4–W. These classes shall be identified as administrative classes.

PART 1605—SELECTIVE SERVICE SYSTEM ORGANIZATION

3. The authority citation for Part 1605 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O 11623.

4. Section 1605.6 is revised to read:

§ 1605.6 National Appeal Board.

(a) There is hereby created and established within the Selective Service System a civilian agency of appeal which shall be known as the National Appeal Board. The President shall appoint not less than three members to the National Appeal Board, and he shall designate one member as chairman.

(b) The President shall appoint members of the National Appeal Board from among citizens of the United States who:

(1) Are not active or retired members of the Armed Forces or any reserve component thereof;

(2) Have not served as a member of the National Appeal Board for a period of more than five years;

(3) Are at least 18 years of age;

(4) Are able to devote sufficient time to duties of the Board; and

(5) Are willing to fairly and uniformly apply Selective Service Law.

(c)(1) A majority of the members of the board shall constitute a quorum for the transaction of business, and a majority of the members present at any meeting at which a quorum is present, shall decide any question.

(2) The National Appeal Board may sit *en banc*, or upon the request of the Director or as determined by the chairman of the National Appeal Board, in panels, each panel to consist of at least three members. The Chairman of the National Appeal Board shall designate the members of each panel and he shall designate one member of each panel as chairman. A majority of the members of a panel shall constitute a quorum for the transaction of business, and a majority of the members present at any meeting at which a quorum is present, shall decide any question. Each panel of the National Appeal Board shall have full authority to act on all cases assigned to it.

(3) The National Appeal Board or a panel thereof shall hold meetings in Washington, DC, and upon request of the Director or as determined by the Chairman of the National Appeal Board, at any other place.

(d) The National Appeal Board or panel thereof shall classify each registrant whose classification has been appealed to the President under Part 1653 of this chapter.

(e) No member of the National Appeal Board shall act on the case of a registrant who is the member's first cousin or closer relation either by blood, marriage, or adoption, or who is the member's employer, employee or fellow employee or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the National Appeal Board. A member of the National Appeal Board must disqualify himself in any matter in which we would be restricted for any reason in making an impartial decision.

(f) Each member of the National Appeal Board while on the business of the National Appeal Board away from his home or regular place of business shall receive actual travel expenses and per diem in lieu of subsistence in accordance with rates established by Federal Travel Regulations.

(g) The Director shall pay the expenses of the members of the National Appeal Board in accord with applicable Federal Travel Regulations and shall furnish that Board and its panels necessary personnel, suitable office space, necessary facilities and services.

PART 1621—DUTY OF REGISTRANTS

5. The authority citation for Part 1621 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

6. Section 1621.3 is revised to read:

§ 1621.3 Duty to report for and submit to examination.

When the Director orders a registrant for examination, it shall be the duty of the registrant to report for and submit to examination at the time and place ordered unless the order has been

canceled. If the time when the registrant is ordered to report for examination is postponed, it shall be the continuing duty of the registrant to report for and submit to examination at such time and place as he may be reordered. Regardless of the time when, or the circumstances under which a registrant fails to report for examination when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and submit to examination at the place specified in the order to report for examination.

PART 1630—CLASSIFICATION RULES

7. The authority citation for Part 1630 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et. seq., E.O. 11623.

8. Section 1630.16 is revised to read:

§ 1630.16 Class I–O: Conscientious objector to all military service.

(a) Any registrant whose acceptability for military service has been satisfactorily determined and who, in accord with Part 1636 of this chapter, has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1–O.

(b) Upon the written request of the registrant filed with his claim for classification in Class 1–O, the local board will consider his claim for classification in Class 1–O before he is examined. If the local board determines that the registrant would qualify for Class 1–O if he were acceptable for military service, it will delay such classification until he is found acceptable for military service. Upon the written request of such registrant, he will be deemed acceptable for military service with examination only for the purpose of paragraph (a) of this section.

9. Section 1630.17 is revised to read:

§ 1630.17 Class 1–O–S: Conscientious objector to all military service (separated).

Any registrant who has been separated from the Armed Forces (including their reserve components) by reason of conscientious objection to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1–O–S unless his period of military service qualifies him for Class 4–A. A registrant in Class 1–O–S will be required to serve the remainder of his obligation under the Military Selective Service Act in Alternative Service.

PART 1633—ADMINISTRATION OF CLASSIFICATION

10. The authority citation for Part 1633 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

11. Section 1633.1(f) is revised to read as follows:

§ 1633.1 Classifying authority.

* * * * *

(f) Compensated employees of an area office may in accord with § 1633.2 classify a registrant into Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 4–A, 4–B, 4–C, 4–F, 4–G, 4–T or 4–W for which he is eligible. No individual shall be classified into class 4–F unless the Secretary of Defense has determined that he is unacceptable for military service.

12. Section 1633.6 is revised to read:

§ 1633.6 Consideration of classes.

Claims of a registrant will be considered in inverse order of the listing of the classes below. When grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1–A–O considered the highest class and Class 1–H considered the lowest class, according to the following table:

Class 1–A–O: Conscientious Objector Available for Noncombatant Military Service Only
Class 1–O: Conscientious Objector to all Military Service
Class 1–O–S: Conscientious Objector to all Military Service (Separated)
Class 2–D: Registrant Deferred Because of Study Preparing for the Ministry
Class 3–A: Registrant Deferred Because of Hardship to Dependents
Class 4–D: Minister of Religion
Class 1–D–D: Deferment for Certain Members of a Reserve Component or Student Taking Military Training
Class 4–B: Official Deferred by Law
Class 4–C: Alien or Dual National
Class 4–G: Registrant Exempted From Service Because of the Death of his Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action Status
Class 4–A: Registrant Who Has Completed Military Service
Class 4–W: Registrant Who Has Completed Alternative Service in Lieu of Induction
Class 1–D–E: Exemption of Certain Members of A Reserve Component or Student Taking Military Training
Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service
Class 1–W: Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction
Class 4–T: Treaty Alien
Class 4–F: Registrant Not Acceptable for Military Service
Class 1–H: Registrant Not Subject of Processing for Induction

PART 1648—CLASSIFICATION BY LOCAL BOARD

13. The authority citation for Part 1648 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

14. Section 1648.3(c) is revised to read as follows:

§ 1648.3 Opportunity for personal appearances.

* * * * *

(c) Any registrant who has filed a claim for classification in Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 4–A, 4–B, 4–C, 4–F, 4–G, 4–T, or 4–W and whose claim has been denied, shall be afforded an opportunity to appear before the board if he requests that the denial of such claim be reviewed by the board.

PART 1656—ALTERNATIVE SERVICE

15. The authority citation for Part 1656 continues to read:

Authority: Sec. 6(j) Military Selective Service Act; 50 U.S.C. App. 456(j).

16. Section 1656.2 is revised to read:

§ 1656.2 Order to perform alternative service.

(a) The local board of jurisdiction shall order any registrant who has been classified in Class 1–O or 1–O–S to perform alternative service at a time and place to be specified by the Director.

(b) When the local board orders a registrant to perform alternative service, it shall be the duty of the registrant to report for and perform alternative service at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for alternative service is postponed, it shall be the continuing duty of the registrant to report for and perform alternative service at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for and perform alternative service when it is his duty to

do so, it shall thereafter be his continuing duty from day to day to report for and perform alternative service at the place specified in the order to report for and perform alternative service.

(c) The Director may authorize a delay of reporting for alternative service for any registrant whose date of induction conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any registrant so delayed shall report for alternative service on the next business day following the religious holiday.

(d)(1) Any registrant who is satisfactorily pursuing a full-time course of instruction at a high school or similar institution of learning and is issued an order to perform alternative service shall, upon presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his date to report to perform alternative service postponed:

(i) Until the time of his graduation therefrom; or
(ii) Until he attains the twentieth anniversary of his birth; or
(iii) Until the end of his last academic year, even if he has attained the twentieth anniversary of his birth; or
(iv) Until he ceases satisfactorily to pursue such course of instruction, whichever is the earliest.

(2) Any registrant who, while satisfactorily pursuing a full-time course of instruction at a college, university or similar institution of learning, is ordered to perform alternative service shall, upon the presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his date to report to perform alternative service.

(i) Until the end of the semester or term, or in the case of his last academic year, the end of the academic year; or
(ii) Until he ceases to satisfactorily pursue such course of instruction, whichever is the earlier.

(e) After the order to perform alternative service has been issued, the Director may postpone for a specific time the date when such registrant is required to report in the following circumstances:

(1) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control. The period of postponement shall not exceed 60 days from the date of the order to perform alternative service. When necessary, the Director may grant one further postponement but the total postponement shall not exceed 90 days from the reporting date on the order to perform alternative service.

(2) When the registrant qualifies and is scheduled for a State or National examination in a profession or occupation which requires certification before being authorized to engage in the practice of that profession or occupation.

(f) The Director shall issue to each registrant whose reporting date to perform alternative service is postponed a written notice thereof.

(g) A postponement of reporting date to perform alternative service shall not render invalid the order to report for alternative service which has been issued to the registrant, but shall operate only to postpone the reporting date, and the registrant shall report on the new date scheduled without having issued to him a new order to report for alternative service.

(h) Any registrant receiving a postponement under the provisions of this section, shall, after the expiration of such postponement, be rescheduled to report for alternative service at the place to which he was originally ordered.

§ 1656.5 [Amended]

17. Section 1656.5(e) is revised to read:

* * * * *

(e) A registrant classfied in Class 1–O or Class 1–O–S may seek his own alternative service work by identifying a job with an employer he believes would be appropriate for Alternative Service assignments and by having the employer advise the ASO in writing that he desires to employ the ASW. The acceptability of the job and employer so identified will be evaluated in accordance with § 1656.5(a).

[FR Doc. 87–6126 Filed 3–19–87; 8:45 am]
BILLING CODE 8015–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego Regulation 85–11]

Security Zone Regulations: San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Amendment to final rule.

SUMMARY: The Coast Guard is amending a security zone regulation at Bravo Pier, Naval Air Station North Island, San Diego, California. The amendments to the regulation are minor in nature and do not substantially effect the rule. The changes involve the national security and are issued without a notice of proposed rulemaking. Two changes are made. The first extends the security zone from 100 feet (30.6 meters) to 100 yards (91 meters) from Bravo Pier. The second provides for measuring the area of the zone from the pier and from ships moored to the pier.

EFFECTIVE DATE: This regulation is effective on March 20, 1987.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: This rulemaking is exempt from the requirement for publication of a notice of proposed rulemaking, and is effective upon publication.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The regulation establishing this security zone (33 CFR 165.1106) was published on 30 January 1986 (51 FR 3775) and was effective on 3 March 1986. When published, the provision to measure the zone from the pier and from vessels moored thereto was inadvertently omitted. In addition, since the rule was published, the width of the zone (100 feet, 30 meters) has been found to be too narrow, limiting the effectiveness of the zone. It has been found that this zone can be widened to 100 yards (91 meters) without significant effect on other users of San Diego Bay.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation tor Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. In Part 165, § 165.1106 is amended by revising paragraph (a) to read as follows:

§ 165.1106 Security Zone: San Diego Bay, California.

(a) *Location:* (1) The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 yards (91 meters) of Bravo Pier, and vessels moored thereto, bounded by the following points (when no vessel is moored at the pier):

(i) Latitude 32°41'53.0" N, Longitude 117°13'33.6" W;

(ii) Latitude 32°41'53.0" N, Longitude 117°13'40.6" W;

(iii) Latitude 32°41'34.0" N, Longitude 117°13'40.6" W;

(iv) Latitude 32°41'34.0" N, Longitude 117°13'34.1" W.

(2) Because the area of this security zone is measured from the pier and from vessels moored thereto, the actual area of this security zone will be larger when a vessel is moored at Bravo Pier.

* * * * *

Dated: March 3, 1987.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 87–5965 Filed 3–19–87; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–6

[FPMR Temp. Reg. A–27, Rev. 1]

Civilian Executive Agency Aircraft Information System (AIS)

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation provides revised procedures for reporting under the Civilian Executive Agency Aircraft Information System (AIS). The revised procedures simplify the reporting of aircraft data by prescribing the use of forms to replace the formats that were previously used. The anticipated results are to make the report easier to prepare and facilitate the compilation of data.

DATES: Effective date: February 8, 1987.
Expiration date: January 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Godwin, Fleet Management Division (703–557–1278).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR 101–6

Government property management.

Authority: Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulation, Temporary Regulation A–27, Revision 1

February 24, 1987.

To: Heads of Federal agencies

Subject: Civilian Executive Agency Aircraft Information System (AIS)

1. *Purpose.* This regulation provides current procedures for reporting under the Civilian Executive Agency Aircraft Information System (AIS). The AIS produces a centralized inventory of aircraft and facilities and cost and utilization data on all aircraft operated by or for Federal civilian agencies. The regulation provides for the use of GSA forms to replace the formats that were prescribed in FPMR Temp. Reg. A–27.

2. *Effective date.* This regulation is effective February 8, 1987.

3. *Expiration date.* This regulation expires on January 31, 1989, unless sooner superseded or canceled.

4. *Applicability.* This regulation applies to all civilian executive agencies which utilize Government-owned or -leased aircraft or commercially acquired aircraft (on a temporary basis) or aircraft services in support of their programs. Aircraft or aircraft services that are acquired from or provided to Department of Defense (DOD) agencies by civilian agencies shall also be reported under this regulation. Specifically excluded are airline fares procured from scheduled commercial airlines for a regularly scheduled flight. Aircraft charters, however, are included in the AIS.

5. *Background.*

a. Under section 201(a) of the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 481(a)], as amended, the Administrator of General Services "shall, in respect of executive agencies, and to the extent that he determines that so doing is advantageous to the Government in terms of economy, efficiency, or service, and with due regard to the program activities of the agencies concerned . . . prescribe policies and methods of procurement and supply of personal property and nonpersonal services, including . . . transportation and traffic management . . . for the use of executive agencies in the proper discharge of their responsibilities . . . ." Section 206(a) of the Act (40 U.S.C. 487(a)) authorizes the Administrator of General Services, "after adequate advance notice to the executive agencies . . . to make surveys of Government property and property management practices and obtain reports thereon from executive agencies."

b. The General Accounting Office (GAO), in its June 24, 1983, report entitled "Federal civilian agencies can better manage their aircraft and related services" (GAO/PLRD–83–64), stated that there was limited coordination and sharing of aircraft services among agencies, even though missions and requirements often were common and aircraft could be maintained and stored at the same or nearby locations. No central data base existed to inform agencies of the types of services or aircraft that might be shared. Without this data, agencies did not know what aircraft other agencies had or what capabilities were available. As a result, each agency satisfied its aircraft requirements independently, which precluded consolidating aircraft needs with other agencies.

c. GAO stated in its report that an informational focal point must be established before extensive sharing and consolidation could be accomplished. This focal point would give agencies a central source from which they could determine which agencies have similar mission needs for aircraft and related services and what resources are available to fill them. Such a system also would foster better coordination and information sharing between agencies' personnel responsible for aircraft programs.

d. GAO recommended that the General Services Administration (GSA) act as the "single coordinating activity" to provide and operate an aircraft information system similar to one operated by the Department of the Interior's Office of Aircraft Services (OAS). GAO indicated that GSA should capture data on aircraft/aircraft service

costs in a manner similar to that of OAS. GSA was also expected to gather utilization data for aircraft operated by or for Government agencies. No Governmentwide figures had previously been gathered on the cost or use of these Government assets or their commercially procured temporary service equivalents.

e. The AIS went into effect on January 11, 1985, with the issuance of FPMR Temp. Reg. A–27. The program has proven to be an effective means for better utilizing aircraft and related facilities.

6. *Guidelines, definitions, and instructions.* Guidelines for preparation, definitions, and instructions for completion of the AIS reports are provided in the attachments to this regulation. Definitions and instructions that apply to individual reports are also included on the reverse side of the applicable forms. As used in this regulation, "aircraft" means a device that is used or intended to be used for flight in the air (see Part 1 of 14 CFR).

7. *System overview/GSA responsibilities.* Through an information system, GSA will gather and maintain data on the inventory of civilian agency aircraft facilities and aircraft, the cost involved in their operation (as well as those aircraft chartered, rented, or contracted for), and the utilization of those aircraft that are operated in-house or by commercial firms for civilian agencies. (For the purpose of this regulation, except where otherwise indicated, agency means any executive department, bureau, or independent office.) This data will be reported to GSA by participating agencies at various intervals. GSA will prepare summary reports of inventory data related to aircraft/facilities eligible for interagency sharing on a quarterly basis and will prepare cost, utilization, and total inventory data reports annually. Information regarding inventory available for multiple agency use will be provided quarterly by GSA to participating agency contact points. (Each agency managing and reporting these assets will determine which aircraft or facilities are available for multiple agency use.) The cost and utilization data will be segregated by GSA according to whether (1) aircraft were owned, leased (for 90 calendar days or longer), on loan, leased/purchased, or bailed, and operated by a Federal agency; or (2) aircraft or aircraft services were rented on a short-term basis (less than 90 calendar days), contracted, or chartered.

8. *Participating agency responsibilities.*

a. Provide GSA with inventory lists of aircraft facilities and aircraft and inform GSA of changes as they occur using GSA Form 3549, Government-owned/Leased Maintenance, Storage, Training, Refueling Facilities (Per Facility), and GSA Form 3550, Government Aircraft Inventory (Per Aircraft).

b. Provide GSA with cost and utilization data on aircraft obtained through contract, rental, or charter, and on all in-house aircraft (except for aircraft described in c(5), below) using GSA Form 3551, Contract/Rental Charter Aircraft Cost and Utilization, and GSA Form 3552, Government Aircraft Cost and Utilization (Per Aircraft).

c. Reporting responsibility for the various categories of aircraft/aircraft service acquisitions are as follows:

(1) *Owned aircraft.* The department or independent agency which holds title to the aircraft is responsible for reporting inventory, cost, and utilization data for each aircraft.

(2) *Bailed aircraft.* The department or independent agency which operates Department of Defense (DOD) owned aircraft is responsible for reporting inventory, cost, and utilization data for each aircraft.

(3) *Lease or lease/purchase aircraft.* The department or independent agency which makes payment to a private or other public sector organization for the aircraft is responsible for reporting inventory, cost, and utilization data for each aircraft.

(4) *Borrowed aircraft.* If title is held by any organization that is not a Federal civilian agency or DOD (e.g., a private organization, university, State or local government), the department or independent agency which operates the aircraft is responsible for reporting inventory, cost, and utilization data for each aircraft. Aircraft on loan from DOD are bailed aircraft.

(5) *Loaned aircraft.* The department or independent agency which owns an aircraft on loan to a State, corporation, or other entity, for the entire fiscal year, will report inventory data associated with that aircraft.

(6) *Contract, charter, and rental aircraft.* The department or independent agency which makes payment to the private sector or other organization (public or private) for the aircraft service is responsible for reporting cost and utilization data by type of aircraft.

9. *Special reports for participating agencies.* GSA will attempt to fulfill requests from agencies for special reports for analysis related to the outputs of this system. If requests result in significant report preparation costs to GSA, as determined on a case-by-case basis, a mutually agreeable GSA administrative fee may be required.

10. *Aircraft used for sensitive missions.* Inventory, cost, and utilization data for agency aircraft dedicated to national defense, law enforcement, or interdiction missions will be safeguarded. GSA will maintain individualized data on aircraft and facilities of these types; however, if specified by the reporting agencies, GSA will not allow their identification (N-number, serial number, etc.), location, or use patterns (beyond nonaircraft specific data) to be disclosed unless provisions of the Freedom of Information Act allow for this disclosure. (Agencies will be routinely informed whenever a freedom of information request is received by GSA, prior to disclosure of any agency-specific information.) The serial number may be a unique, nonidentifying number assigned by the agency if the aircraft is used in a sensitive mission.

11. *Reports.* Each agency identified in paragraph 4 of this regulation shall submit their AIS data to the General Services Administration (FBF), Washington, DC 20406, as indicated below. Interagency report control number 0322–GSA–AN has been assigned to this report in accordance with FIRMR 201–45.6.

a. *Facilities inventories.* Additions, deletions, and changes shall be submitted to GSA as they occur using GSA Form 3549. Refer to attachments A and A–1 for guidelines, general instructions, and definitions.

b. *Aircraft inventories.* Additions, deletions, and changes shall be submitted to GSA as they occur using GSA Form 3550. Refer to attachments A and A–2 for guidelines, general instructions, and definitions.

c. *Contract/rental/charter aircraft cost and utilization reports.* These reports are due on January 15 of each year and shall reflect data applicable to the preceding fiscal year ending September 30. They are to be submitted on GSA Form 3551. Refer to attachments B and B–1 for guidelines for preparation, general instructions, and definitions.

d. *Government aircraft cost and utilization reports.* These reports are due on January 15 of each year and shall reflect data applicable to the preceding fiscal year ending September 30. They are to be submitted on GSA Form 3552. Refer to attachments B and B–2 for guidelines for preparation, general instructions, and definitions.

12. *Availability of forms.* Copies of the forms identified in a thru d, below, may be obtained from the General Services

Administration (FBF), Washington, DC 20406.

a. GSA Form 3549, Government-owned/Leased Maintenance, Storage, Training, Refueling Facilities (Per Facility).

b. GSA Form 3550, Government Aircraft Inventory (Per Aircraft).

c. GSA Form 3551, Contract/Rental/Charter Aircraft Cost and Utilization.

d. GSA Form 3552, Government Aircraft Cost and Utilization (Per Aircraft).

13. *Effect on other directives.* FPMR Temporary Regulation A–27 is superseded and canceled.

T.C. Golden,

Administrator of General Services.

February 24, 1987.

Attachment A.—Guidelines for Preparing Aircraft Facility and Aircraft Inventory Reports (GSA Forms 3549 and 3550)

Agencies have the option to report to GSA on any organizational level they choose. GSA does not require data to be aggregated by a single consolidated agency contact point and then forwarded to GSA.

Aircraft used in sensitive missions, as determined and identified by reporting agencies in writing to GSA, will not be identified on GSA Form 3550. The serial number may be a number assigned by the agency if the aircraft is used in a sensitive mission and should be reported as such by the agency in its regular inventory reports, as well as any updates to those reports. For example, an aircraft with a serial number of 1234567 may be reported to GSA as "ABC" or any other designation chosen by the agency. Once established, designations for individual aircraft must remain unique and be consistent to allow for accurate inventory updates by GSA.

The inventory component of this system will include aircraft that are operated by agencies whether owned, leased, lease/purchase, borrowed, or bailed. The output will be segregated by GSA as to whether the aircraft and/or facilities are or are not available for interagency use. The data elements should be completed on a "per aircraft" or "per facility" basis. GSA will collect, compile, and disseminate inventory data in the following manner:

1. Agencies shall provide GSA with inventory data/information for aircraft and related facilities that each agency designates as potentially available for interagency use. Once this initial "source list" is compiled, agencies shall inform GSA when there is a change to that source list. GSA will send this source list to designated contact points in each participating agency for information as to possible interagency sharing of aircraft or related services. Agencies are required to provide to GSA their inventory in accordance with paragraph 11 of this regulation.

2. Agencies shall also provide GSA with inventory input for those aircraft and related facilities that are not available for interagency use, as determined by the reporting agency. Agencies shall report this information to GSA along with their source list input prescribed in 1, above. As with source list inventory, agencies shall inform GSA when there is a change to this inventory regardless of whether it is or is not eligible for sharing.

Attachment A–1

Instructions for Completing GSA Form 3549, Government-Owned/Leased Maintenance, Storage, Training, Refueling Facilities (Per Facility)

Type of Report

New—First time facility reported in the AIS.

Change—Change in any data element regarding facility previously reported in the AIS (circle format item number showing change).

Delete—Facility previously reported in AIS and removed or deleted from department's inventory.

A. *Department or Independent Office*—Executive department or independent office not assigned to a department.

B. *Agency*—Bureau/office/service within a department.

C. *Address*—Mailing address for reporting office or agency.

1. *Maintenance Facility*—An aircraft repair station. Each department must assign a unique four-character number for each facility to enable reference in the automated system.

a. through c. Self-explanatory.

d. *Type of maintenance that can be performed and any special conditions for interagency use*—Types of maintenance the facility has been authorized to perform by FAA; i.e., engine overhaul, avionics, airframe, and any special conditions, identified by the agency designating the facility to be eligible for sharing.

2. *Storage Facility*—Aircraft hangar or tie-down facility. Each department must assign a unique four-character number for each facility to enable reference in the automated system.

a. through d. Self-explanatory.

3. *Training Facility*—A learning center for aviation utilization and aviation safety. Each department must assign a unique four-character number for each facility to enable reference in the automated system.

a. through c. Self-explanatory.

4. *Refueling Facility*—Aviation fuel supply depot. Each department must assign a unique four-character number for each facility to enable reference in the automated system.

a. through d. Self-explanatory.

Instructions for Completing GSA Form 3550, Government Aircraft Inventory (Per Aircraft)

Aircraft inventory shall include only those aircraft or facilities available to the agency on a long-term (longer than 90 calendar days) basis. The cost element definitions apply to those aircraft that are Government-owned, leased, lease/purchase, borrowed, loaned, or bailed.

Type of Report (Check One):

New—First time aircraft reported in the AIS.

Change—Change in any data element regarding aircraft previously reported in the AIS (circle format item number showing change).

Delete—Aircraft previously reported in AIS which had been removed from department's inventory.

Effective Date of the Report: month, day, and year.

A. *Department or Independent Office*—Executive department or independent office not assigned to a department.

B. *Agency*—Bureau/office/service within a department.

C. *Address*—Mailing address for reporting office or agency.

D. *Title and Telephone Number of Contacts*—Position title and telephone number of the respondent agency coordinator. A department or agency may include multiple contacts. For example, there may be contacts at different organizational levels or various persons knowledgeable about different aspects of the reporting activity's aircraft operations.

1. *Owned Aircraft*—Aircraft for which the reporting agency holds title.

2. *Bailed Aircraft*—Department of Defense (DOD) owned aircraft operated by a non-DOD reporting agency.

3. *Leased Aircraft*—Aircraft leased for 90 calendar days or more from the private sector and operated by a Federal agency.

4. *Lease/Purchase Aircraft*—Aircraft leased for 90 consecutive days or more by a Federal agency (with an option to purchase) from the private sector and operated by a Federal agency.

5. *Borrowed Aircraft*—An aircraft under the operational control of a

reporting Federal agency when that agency does not hold title.

6. *Loaned Aircraft*—An aircraft owned by a department or independent office which is on loan to a State, cooperator, or other entity, for the entire year.

7. *Aircraft Type*—Make and model of aircraft (e.g., Cessna 185, Cessna 185RG, Cessna 210, Cessna P 210).

8. *Capitalized or Market Value*—Value initially recorded on agency property records and/or accounting records at the time of acquisition. If the aircraft value is not capitalized, the market value at the time of acquisition should be used. Whichever methodology is used per aircraft, it should remain consistent with each data submission to GSA.

9. *Aircraft Serial Number*—Manufacturer's serial number or agency assigned number.

10. *Aircraft Registration Number*—Registration number assigned by the Federal Aviation Administration (FAA) or military-designated tail number.

11. *Aircraft Location*—Location of normal base of operations.

12. *Primary Mission or Use (Reason for having the aircraft)*—For example, fire suppression, administrative travel, medivac/rescue, law enforcement, etc.

13. *Aircraft Date of Manufacture*—Self-explanatory.

14. *Passenger Seats*—Number of seats usually available for passenger use—excludes crew seats.

15. *Cargo Limits (Useful Payload)*—Difference between the equipped weight of the aircraft and the maximum allowable gross weight. Equipped weight does not include fuel and pilot. Also, cargo capacity should be expressed in cubic feet and dimensions of the cargo space.

16. *Special Equipment Installed*—Equipment which is identifiable or unique to special programs which may alter the capabilities or utilization for that aircraft model. Examples are floats, infra-red detection equipment, large cargo door, and airborne scientific platforms.

17. *Special Mission*—The specific mission for which an aircraft is modified or equipped and not readily adaptable to other cargo/passenger use (complete if different from 15, above).

18. *Self-explanatory.*

19. *Self-explanatory.*

20. *Self-explanatory.*

Guidelines for Preparing Cost and Utilization Reports (GSA Forms 3551 and 3552)

Agencies shall report to GSA data on costs incurred as a result of (1) owned, leased, lease/purchase, borrowed, or bailed aircraft, and related facilities; and (2) aircraft services procured in any other way (i.e., chartered, contracted for, or rented on a short-term basis). GSA will segregate the data output by those two basic categories. Cost and utilization data for previous fiscal years shall be reported by agencies annually, at a mininum, in accordance with paragraph 11 of this regulation.

Agencies shall also report to GSA, on an annual basis, data on utilization of aircraft. As with cost data, agencies shall report utilization data as indicated on GSA Forms 3551 and 3552 for: (1) Aircraft that are Government-owned and operated, leased, lease/purchase, borrowed, or bailed, and operated by agencies (GSA Form 3552); and (2) aircraft services procured by them in any other way; i.e., chartered or contracted for (from a commercial or other external source) or rented on a short-term basis (GSA Form 3551). As with inventory and cost data, agencies, at their option, may send the data to GSA from many separate points or from a consolidated point. If agencies elect to report more frequently than annually to GSA (for example, as costs occur per aircraft or procured aircraft service), they may do so.

Agencies shall provide only a summary of the costs or the amount of the total cost for those aircraft costs that involve contracted, chartered, or short-term rental charges (GSA Form 3551). However, costs incurred from operation of Government-owned, leased, lease/purchase, borrowed, or bailed aircraft (GSA Form 3552) should be broken down by agencies into their various basic components. This means, as a minimum, that differentiation should be made among the following cost categories:

—Fuel and other fluids
—Direct maintenance materials
—Direct maintenance labor
—Direct labor crew
—Operations overhead
—Depreciation
—Aircraft damage costs
—Lease costs
—Other costs (if cost cannot be identified to the above elements, enter here)
—Amount from total of above categories reimbursed from outside reporting department

Cost or utilization data for Government-owned, leased, lease/purchase, borrowed, or bailed aircraft should be reported on a "per aircraft basis" (refer to GSA Form 3552).

Utilization data required are:
Hours flown.
Mission of flight.

Cost and utilization data for contracted, chartered, or rented aircraft shall be reported by aircraft type (make and model). (See note below.)

Note.—If any agency uses a different method to define hours flown for either its Government aircraft or commercially procured aircraft services from that prescribed in the instructions to GSA Forms 3551 and 3552, the method used should be noted with the agency's data reported to GSA.

Attachment B–1.—Instructions for Completing GSA Form 3551, Contract/Rental/Charter Aircraft Cost and Utilization

A. *Department or Independent Office*—Executive department or independent office not assigned to a department.

B. *Agency*—Bureau/office/service within a department.

C. *Address*—Mailing address for reporting office or agency.

D. *Title and Telephone Number of Contacts*—Position title and telephone number of the respondent agency coordinator. A department or agency may include multiple contacts. For example, there may be contacts at different organizational levels or various persons knowledgeable about different aspects of the reporting activity's aircraft operations.

Period Covered—The beginning and ending periods for which a report is submitted; i.e., August 6, 1984, would be reported 080684. (M=month; D=day; Y=year)

1. *Contract*—Aircraft procured through formal contractual arrangements and fully operated by the vendor of said services. (See also 2a through d, below.)

2. *Charter/Rental*—A nonformal procurement of an aircraft which is fully operated by the vendor through an agreement arrangement or one-time charter. This includes one-time charters procured through Government transportation requests (GTR) (not to exceed 89 days). (See also a through d, below.)

a. *Hours Flown (To nearest hour)*—The time elapsed from take-off to touch-down. If a reporting agency is using a different method of calculation for some or all of its aircraft utilization, this method shall be indicated with the agency's data submission.

b. *Contract and Charter/Rental Costs*—Report under 1b or 2b the total cost to civilian agencies for all procured aircraft and related services included in a given report; i.e., outlays to the private sector or organization (public or private) that is external to the Federal civilian

agency. If contract or charter/rental aircraft are operated by in-house crews, some or all of the time, report these costs (which would otherwise not be part of the contract/charter/rental costs) under le/lf or 2e/2f. These costs should include fuel when the aircraft is contracted/chartered/rented "dry" (without fuel). Report these costs under le/lf or 2e/2f, as well. (See paragraph 8c(6) of this regulation.)

c. *Number of Aircraft Summarized on this Report/Aircraft Type*—Data may be reported by individual aircraft or summarized by aircraft type (make and model).

d. *Contract and Charter/Rental Aircraft Mission*—This is an optional data element and can be reported at agency discretion. Its provision would enable a breakdown of commercially procured service costs by basic mission.

Attachment B-2.—Instructions for Completing GSA Form 3552, Government Aircraft Cost and Utilization (Per Aircraft)

A. *Department or Independent Office*—Executive department or independent office not assigned to a department.

B. *Agency*—Bureau/office/service within a department.

C. *Address*—Mailing address for reporting office or agency.

D. *Title and Telephone Number of Contacts*—Position title and telephone number of the respondent agency coordinator. A department or agency may include multiple contacts. For example, there may be contacts at different organizational levels or various persons knowledgeable about different aspects of the reporting activity's aircraft operations.

1. *Aircraft Type*—Make and model of aircraft (e.g., Cessna 185, Cessna 185RG, Cessna 210, Cessna P 210).

2. *Aircraft Serial Number*—Manufacturer's serial number or agency assigned number.

3. *Aircraft Registration Number*—Registration number assigned by the Federal Aviation Administration (FAA) or military-designated tail number.

4. *Owned Aircraft*—Aircraft for which the reporting agency holds title.

5. *Bailed Aircraft*—Department of Defense (DOD) owned aircraft operated by a non-DOD reporting agency.

6. *Leased Aircraft*—Aircraft leased for 90 consecutive days or more from the private sector and operated by a Federal agency.

7. *Lease/Purchase Aircraft*—Aircraft leased for 90 consecutive days or more by a Federal agency (with an option to purchase) from the private sector and operated by a Federal agency.

8. *Borrowed Aircraft*—An aircraft under the operational control of a reporting Federal agency when that agency does not hold title.

9. *Period covered*—The beginning and ending periods for which a report is submitted; i.e., August 6, 1984, would be 080684. (M=month; D=day; Y=year)

10. *Hours Flown (To nearest hour)*—The time elapsed from take-off to touch-down. If a reporting agency is using a different method of calculation for some or all of its aircraft utilization, this method shall be indicated with the agency's data submission.

11. *Fuel and Other Fluids*—Fuel includes aviation gasoline and jet fuel used by aircraft. Other fluids include replacement fluids other than fuel, such as engine oil, hydraulic fluids, and water-methanol.

12. *Direct Maintenance Materials*—Direct maintenance materials include parts and materials resulting from scheduled maintenance, unscheduled maintenance, scheduled and unscheduled rebuilding or overhaul (time-limited, life-limited, or condition-limited components), and modification of aircraft to accommodate special purpose applications. Included are all direct maintenance parts and materials whether directly identifiable to specific aircraft or not. (See note, below.)

13. *Direct Maintenance Labor*—Direct maintenance labor includes salaries, employee benefits, training, and travel associated with scheduled maintenance, unscheduled maintenance, avionics maintenance, and modification of aircraft to accommodate special-purpose applications. (See note, below.)

Note.—Maintenance work contracted out will be included in the direct maintenance categories.

Costs incurred under items 12 and 13, should they affect capitalized value of an aircraft, can be reported by the agency incurring them as either maintenance costs or "other" costs to reflect the increase in capitalized value. If the latter approach is chosen, reporting agencies should note this method next to their "other" costs category entry. Otherwise, an agency may report these costs under item 16, "depreciation," reflecting the increased capitalization over the life of the aircraft.

14. *Direct Labor Crew*—Crew costs include salaries, benefits, travel, training, and all other miscellaneous costs associated with crew members assigned to aircraft. Such crew members include pilots, copilots, flight engineers, cabin attendants, and load masters, where applicable.

15. *Operations Overhead*—Fixed-based operations include hangar/storage rental, utilities, and aircraft tiedown costs for non-Government facilities. Costs for Government facilities include utilities and janitorial costs, and maintenance costs for buildings and grounds, depreciation on capitalized facilities and related improvements, depreciation on capitalized shop and avionics support equipment (if this equipment is depreciated), and salary and benefits costs associated with both administrative and operational overhead personnel.

16. *Depreciation*—Depreciation is the decrease or loss in value of an aircraft because of wear, age, or other causes, such as technological obsolescence. Value loss will be computed based upon the difference between the known or estimated capitalized value (or market value, if applicable) when acquired (see also "NOTE" to items 12 and 13) and the estimated residual value when the aircraft is scheduled for replacement. This is not to mean that the value of the aircraft should be reassessed annually based on market value. Depreciation will be straight line from the date of acquisition to the date of scheduled replacement. Aircraft which have depreciated to static residual value and are still kept in inventory will not be depreciated. Aircraft leased from the private sector and operated by the Government will have no depreciation cost.

17. *Aircraft Damage Costs*—In the private sector, the costs of aircraft damage are usually covered by various insurance policies for which premiums are paid. Since the Government has a policy of insuring itself, there is no cost for premiums, as such. Consequently, it is appropriate to view cash outlays and values lost as the result of accidents, incidents, ground mishaps, and other situations which cause damage as being tantamount to the premium the Government pays as a self-insured entity. Aircraft damage cost is therefore the cost of such happenings and includes the cost of repair, salvage, or recovery, and write-off costs with respect to the aircraft.

18. *Lease Costs*—Lease costs include direct costs incurred in the lease of an aircraft or related facilities from (and paid to) the private sector.

19. *Self-explanatory.*

20. *Self-explanatory.*

[FR Doc. 87-6017 Filed 3-19-87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BERC-387-FC]

Medicare Program; Enrollment Provisions Concerning Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: For health maintenance organizations (HMOs) and competitive medical plans (CMPs), this final rule (1) clarifies the financial responsibility of HMOs and CMPs for inpatient stays in hospitals paid under the prospective payment system when the patient begins or ends enrollment in the HMO or CMP during the hospital stay; (2) eliminates the one full calendar month period between a request to disenroll and the effective date of disenrollment and requires a written explanation to disenrolling beneficiaries of exactly when their enrollment ends; and (3) requires HMOs and CMPs to submit marketing materials for HCFA's review before their distribution to the public. This rule implements statutory provisions of sections 9211(a), (b) and (c) of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

EFFECTIVE DATE: April 20, 1987. This rule is being issued in final for reasons explained in the Waiver of Proposed Rulemaking in the Supplementary Information section below. However, we will consider any comments we receive at the appropriate address, as provided below, no later than 5:00 p.m. on May 19, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-387-FC, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for HCFA.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-387-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Rita McGrath, (301) 594-6719.

SUPPLEMENTARY INFORMATION:

Background

Health maintenance organizations (HMOs) and competitive medical plans (CMPs) are entities that provide specified health care services in a geographic area to a group of persons who are enrolled as members. Under Medicare the HMO or CMP agrees to provide or otherwise assure delivery of an agreed upon set of health services. HMOs and CMPs contracting on a risk basis are reimbursed through a predetermined, fixed periodic payment made on behalf of the enrollees, without regard to the amounts of actual services provided. HMOs and CMPs contracting on a cost basis are also paid a monthly fee in advance for services provided to Medicare enrollees, but they are subject to an annual reconciliation so that they are paid for the actual services they provide. This arrangement differs from the general approach of Medicare payment on a fee-for-service basis. (Our rules regarding HMOs and CMPs are located at 42 CFR Part 417, Subpart C.)

A beneficiary who enrolls in a risk HMO or CMP must receive all services directly from the HMO or CMP or through prior arrangement by the HMO or CMP, except for (1) emergency services, and (2) services urgently needed when the enrollee is absent from the geographic area of the HMO or CMP. HMOs and CMPs must provide reasonable reimbursement for emergency and urgently needed services, even in the absence of prior arrangement or approval, as described in 42 CFR 417.414(c)(1).

A. Beginning or Ending Enrollment During a Hospital Stay

On April 20, 1983, section 601 of Pub. L. 98-21 added provisions to the Social Security Act (the Act) to pay most hospitals set fees based on costs per diagnosis rather than a retrospective cost-per-day basis. Under the prospective payment system (PPS), we pay for a hospital's operating costs related to inpatient hospital services on a per case basis. The prospective payment amount is intended to provide full payment, less deductibles and coinsurance, for all inpatient services associated with a particular stay for a particular diagnosis. That is, for each discharge, we pay a set amount that reflects the average resources utilized in treating cases assigned to a particular diagnosis-related group (DRG), the wage level in the area in which the hospital is located, and other adjustments as specified in 42 CFR Part 412. Additional payment may be made for a case that meets certain outlier criteria based on length of stay and cost. Otherwise, the prospective payment amount per case may not be increased or reduced. If a hospital's costs for a particular case are lower than the payment amount, it keeps the difference; if the costs are higher, it must absorb the loss.

Payment for each case as a whole, from admission to discharge, is generally simple to administer. However, when a patient's eligibility or payment status changes during the course of a hospital stay, a question arises as to whether payment should be made under the prospective payment system or in some other manner. Under a reasonable cost methodology, per diem costs may be computed and the cost of the stay apportioned based on the date of the change of status. Such an apportionment is made when an HMO or CMP enrolls or disenrolls a beneficiary during the course of the stay in a cost-based reimbursed hospital. However, such division of a prospective payment amount, on a per diem or other basis, undercuts the principles and objectives of the prospective payment system. Moreover, since the first days of a stay generally require the most intense use of resources, division of the prospective payment on an average per diem basis may not reflect the relative resource consumption as of the date of the change in status.

In September 1985 we issued instructions that stated if a beneficiary becomes an enrollee of a risk-contracting organization during an inpatient stay in a hospital, the HMO or CMP is not financially responsible for the inpatient Part A services provided during that stay. The HMO or CMP is, beginning with the effective date of enrollment, financially responsible for all other services, including Part B services (such as physician services). Beginning the day after the day of discharge, the HMO or CMP is responsible for any new inpatient Part A

services required by the enrollee. Beginning with the effective date of enrollment, Medicare will make its normal monthly capitation payment to the organization and the beneficiary will be responsible for premiums or other payments due to the HMO or CMP.

The same instruction provided that if a beneficiary's enrollment in the HMO or CMP terminates during an inpatient stay in a hospital, and the stay was arranged for or provided by the HMO or CMP or the HMO or CMP is financially responsible for the stay (either because it is an emergency stay, or because the enrollee was away from the geographic area and the inpatient services were urgently needed), the HMO or CMP continues to be responsible for payment of the inpatient servcies. Any other services that would be due the beneficiary under the HMO contract are not the organization's responsibility, if furnished on or after the effective date of the disenrollment. Medicare will not make a monthly capitation payment for any periods after disenrollment nor will it be responsible for any Part A inpatient hospital services until after the beneficiary's discharge. The beneficiary is not responsible for premiums or other payment to the organization for services provided after the effective disenrollment date, regardless of his or her continued hospitalization.

Section 9211(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as enacted on April 7, 1986, revised section 1876 of the Social Security Act (the Act); its provisions closely approximate those of the instructions. This statutory revision is effective with enrollments beginning or ending on or after April 7, 1986. However, the intermediary instructions instituted similar policies for enrollments and disenrollments occurring September 18, 1985 or later.

B. Enrollment and Disenrollment Requirements

Under our regulations at 42 CFR 417.460(b), which implement section 1876(c)(3)(B) of the Act, a beneficiary may request disenrollment from an HMO or CMP at any time and also request a specific disenrollment date. However, before passage of COBRA, under section 1876(c)(3)(B) that date could not be earlier than the first day of the second month following the month in which the HMO or CMP receives the request.

Section 9211(b) of COBRA amended section 1876(c)(3)(B) of the Act by permitting disenrollment as early as the first full calendar month following the month in which the HMO or CMP receives the enrollee's request. In addition, it states that the organization must provide the beneficiary with a copy of his or her written disenrollment request. A risk contracting organization must also provide a written explanation of the period, which ends on the effective date of disenrollment, during which the beneficiary continues to be enrolled with the organization and may not receive covered Medicare benefits from other sources.

The change reflects Congress' belief that enrollees should be able to terminate enrollment without experiencing long delays (up to 60 days from the request to disenroll). As a result of the revision, there will be no delays longer than 30 days. In addition, Congress expressed concern that beneficiaries might request to terminate enrollment and believe that they can immediately use the regular fee-for-service Medicare program. The purpose of requiring the HMO or CMP to give the beneficiary a copy of his or her request to disenroll is to ensure that the beneficiary be informed clearly when he or she may begin using the regular Medicare benefit (H.R. Rep. No. 265 (Part 1), 99th Cong. 1st Sess. 46 (1985)).

The provisions of section 9211(b) of COBRA are effective for requests for termination submitted on or after May 1, 1986.

C. Marketing Materials

Section 1876(c)(3)(C) of the Act permits the Secretary to prescribe the procedures and conditions under which an eligible HMO or CMP may inform a Medicare beneficiary about the organization. Our regulations at 42 CFR 417.428(a) require each HMO and CMP to provide individuals interested in enrolling with adequate written descriptions of the organization's rules, procedures, benefits, fees and other charges, services, and other information necessary for beneficiaries to make an informed decision about enrollment.

Section 9211(c) of COBRA amended section 1876(c)(3)(C) by adding a requirement that an organization submit to the Secretary any marketing material at least 45 days before its distribution. HCFA will review the material and may disapprove its distribution if we determine that the material is "materially inaccurate or misleading or otherwise makes a material misrepresentation." This requirement applies to material distributed on or after July 1, 1986.

Provisions of the Regulations

We are amending our regulations at 42 CFR Part 417 to implement these COBRA provisions.

A. Enrollment Begins or Ends During Hospitalization

We are adding two new paragraphs, (d) and (e), to 42 CFR 417.440.

Under § 417.440(d), an organization with a risk contract will not have to pay for Part A services furnished an inpatient of a PPS hospital if the patient's enrollment begins after he or she is hospitalized. The section will require an organization to assume responsibility for provision of or payment for inpatient hospital services under Part A on the day after the day of discharge from an inpatient hospital stay during which a beneficiary's enrollment in the organization began. The organization will be responsible for all services due under the contract other than inpatient hospital services furnished under Part A.

Under the revised § 417.440(e) we require the organization to be responsible for all Part A services through the day of discharge furnished to one of its enrollees who is an inpatient of a PPS hospital on the day his or her enrollment terminates if the organization provided for or arranged the hospital stay or is financially responsible for it. The organization will not be responsible for any services that are not inpatient hospital services under Part A beginning on the day disenrollment is effective. We have added a cross-reference to this section to Part 412 (Hospital services subject to the prospective payment system) and § 417.584 (Payment to organizations with risk contracts) for purposes of clarity.

We are also making a technical revision to § 417.584, Payment to organizations with risk contracts, to except payment under the new provisions from the requirements of § 417.584.

B. Disenrollment Date and Notice

We are revising § 417.460(b)(1) so that a beneficiary's enrollment may terminate as early as the first day of the first calendar month following the request to terminate. Paragraph (b)(2), which now requires an organization to send HCFA notice of the disenrollment within 30 days of the request, will be changed to require the notice to be sent to us promptly instead, since there will be less time to effectuate the disenrollment. The contents of the paragraph will be subsumed into paragraph (b)(1).

As noted, we are providing that organizations submit disenrollments promptly to HCFA. We are not being more specific about the timeframe for submitting this material because

organizations must accept disenrollments through the last day of each month, to be effective on the first day of the following month. Therefore, HCFA and organizations will routinely process disenrollments with retroactive disenrollment dates. Also § 417.460(b)(4) requires organizations to reimburse HCFA for any payments received for months after the month disenrollment is effective. It is also in the best interests of organizations to submit disenrollment notices as soon as possible after they are received from enrollees. If we decide that specific timeframes are needed, we will include them in the HMO/CMP Manual instructions distributed to all organizations.

Section 417.460(b)(2) will require the organization to provide the enrollee with a copy of his or her request for termination of enrollment and a written explanation of the period during which the enrollee remains enrolled in the organization and remains subject to the requirements in § 417.448(a), which, in general, requires certain enrollees to receive all services through the organization.

Section 417.460(b)(3) is revised to clarify that the organization has no authority to approve or disapprove an enrollee's request for termination. Section 417.460(b)(4) is revised to clarify that the organization must reimburse HCFA for amounts incorrectly paid when the organization fails to submit timely, correct, and complete disenrollment notices to HCFA.

C. Marketing Materials

We are amending § 417.428 to implement the requirement that an organization submit all marketing material to us for review at least 45 days before its planned distribution. The regulations will also prohibit the organization from distributing the material if HCFA notifies the organization that we have disapproved the material because it is inaccurate or misleading or misrepresents the organization, its marketing representatives, or HCFA. For example, we will disapprove the distribution of material that implies that the organization is Federally recommended.

Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any document that is likely to: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The changes we are making in this rule, which implement statutory provisions, will neither result in an annual economic impact of $100 million or more nor meet any other criterion of the Executive Order. We have determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We prepare and publish a regulatory flexibility analysis for final regulations, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HMOs and CMPs to be small entities.

The clarification of who will pay when the patient begins or ends enrollment in the HMO or CMP during an inpatient stay in a PPS hospital will affect only a small number of cases. Our current procedures effectively accomplish the same result. The effect of this proposal on the aggregate expenditures for which HMOs and CMPs are liable should be negiligible.

We are shortening the period between a request to disenroll and the effective date of disenrollment to not longer than 30 days, and requiring that beneficiaries be informed when their enrollment ends. We anticipate that the notice provision will reduce the beneficiary's chance of misunderstanding the ending date of his or her disenrollment. The provision shortening the time period will afford the beneficiary earlier opportunity to exercise his or her options (of joining another HMO or CMP or of receiving covered services outside the HMO or CMP) after disenrollment. In addition, since a very small percentage of enrollees choose to disenroll, the economic effect of this provision on HMOs and CMPs or beneficiaries is not expected to be significant.

The provision requiring approval of marketing material could result in some additional costs for affected small entities if material were disapproved and had to be revised. We assume that the print or video will be submitted in draft rather than final to assure lower costs. We do not foresee any substantial economic impact resulting from this provision.

In view of the above, we have determined, and the Secretary certifies, that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis has not been prepared.

Paperwork Burden

Sections 417.428(a) (1), (2) and (3) and 417.460(a) (1), (2), (3), (4), and (6), and 417.460(b) (1) and (2) of this rule contain information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. A notice will be published in the **Federal Register** when approval is obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the directions in the ADDRESS section.

Waiver of Proposed Rulemaking

It has been our practice to publish general notice of proposed rulemaking in the **Federal Register**, and afford prior public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement does not apply when we find good cause that such a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporate a statement of the finding and its reasons in the rules issued.

We have not issued a proposed rule on the provisions in these regulations because the revisions merely conform the Medicare regulations to the amendments to the Act made by sections 9211 (a), (b) and (c) of COBRA, which are already in effect (April 7, May 1, and July 1, 1986, respectively).

We find good cause to issue this final rule without prior notice and comment because additional delay would be both unnecessary and contrary to the public interest. Additional delay is unnecessary because these changes merely conform the regulations to the statute, the provisions of which are in effect and currently being implemented. Further delay would be contrary to the public interest in that two of the provisions, the one requiring approval of marketing material before its distribution and the one requiring less time between a request to disenroll and actual disenrollment, benefit the

beneficiary (the third provision has a neutral effect).

Because we are already implementing the provisions of the statute as mandated by the statutory effective dates, the parties most affected by these regulations (Medicare carriers and intermediaries and the HMOs and CMPs) know of the substance of the rule.

List of Subjects in 42 CFR Part 417

Administrative practice and procedures, Health maintenance organization (HMO), Medicare.

42 CFR Part 417 Subpart C is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e).

2. In § 417.428, the introductory language of paragraphs (a) and (b) is republished for the convenience of the reader, and the section is amended by adding a new paragraph (a)(3) and a new paragraph (b)(5) as follows:

§ 417.428 Marketing activities.

(a) *Required marketing activities.* An organization must meet the following requirements.

* * * * *

(3) Submit all marketing materials to HCFA at least 45 days before their planned distribution.

(b) *Prohibited marketing activities—general.* In offering its plan to Medicare beneficiaries, an organization may not engage in any of the following practices or activities:

* * * * *

(5) Distribution of marketing materials if, before the expiration of the 45-day period described in paragraph (a)(3) of this section, the organization receives written notice from HCFA that HCFA has disapproved the material because it is inaccurate or misleading or it misrepresents the organization, its marketing representatives or HCFA.

* * * * *

3. Section 417.440 is amended by revising paragraph (b)(1) and by adding paragraphs (d) and (e), as follows:

§ 417.440 Entitlement to health care services from an organization.

* * * * *

(b) *Scope of services.* (1) *Part A and Part B services.* Except as specified in paragraphs (c), (d) and (e) of this section, a Medicare enrollee is entitled to receive from the organization all the services and supplies that are covered by Part A and Part B of Medicare (if he or she is entitled to benefits under both programs) or by Medicare Part B (if he or she is entitled only under that program) that are available to individuals residing in the geographical area served by the organization.

* * * * *

(d) *Limitation on provision of inpatient hospital services.* If a beneficiary's effective date of coverage, as defined by § 417.450 of this part, in an organization with a risk contract occurs during an inpatient stay in a hospital paid for under Part 412 of this chapter, the organization—

(1) Is not responsible for the provision of any of the inpatient hospital services under Part A during the stay and is not required to pay for those services;

(2) Must assume responsibility for payment for or provision of inpatient hospital services under Part A on the day after the day of discharge from the inpatient stay; and

(3) Is responsible for the full scope of services under paragraph (b) of this section, other than inpatient hospital services under Part A, beginning on the effective date of enrollment.

(e) *Extension of provision of inpatient hospital services.* If an enrollee's effective date of disenrollment, as defined by § 417.460 of this part, occurs during an inpatient stay in a hospital paid for under Part 412 of this chapter and the stay is provided or arranged for by the organization, or the organization is financially responsible for the hospitalization under paragraph (a)(2) of this section, the organization—

(1) Is financially responsible for payment of the inpatient services under Part A through the date the beneficiary is discharged from the inpatient stay; and

(2) Is not responsible for the provision of services, furnished on or after the effective date of disenrollment, other than inpatient hospital services under Part A.

4. The introductory language of paragraph (a) in § 417.450 is revised to read as follows:

§ 417.450 Effective date of coverage.

(a) *Basic rules.* Except as specified in paragraph (b) of this section, and notwithstanding the provisions of § 417.440(d).

* * * * *

5. Section 417.460(b) is revised to read as follows:

§ 417.460 Disenrollment of beneficiaries and termination of payment to an organization.

* * * * *

(b) *Disenrollment by the enrollee.* (1) A Medicare enrollee may disenroll at any time by giving the organization a signed, dated request in the form and manner prescribed by the organization. The enrollee may request a certain disenrollment date but it may be no earlier than the first day of the month following the month in which the organization receives the request. The organization must submit a disenrollment notice to HCFA promptly.

(2) An organization must provide the enrollee with a copy of the written request for termination of enrollment. Risk organizations must also provide a written statement explaining that the enrollee remains enrolled in the organization until the effective date of the disenrollment and is subject to the requirements described in § 417.448(a) until that date.

(3) HCFA's responsibility for payments to the organization ends with the close of the month of termination requested by the enrollee.

(4) If the organization fails to submit the correct and complete notice required in paragraph (b)(1) of this section on a timely basis, the organization must reimburse HCFA for any capitation payments received after the month in which payments would have ceased if the requirement has been met timely.

6. The introductory paragraph of § 417.584 is revised to read as follows:

§ 417.584 Payment to organizations with risk contracts.

Except as provided in §§ 417.440(d) and (e), 417.585 and 417.586, HCFA makes payments for covered services furnished to the organization's Medicare enrollees only to the organization.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance, No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: November 24, 1986.

William L. Roper,

Administrator, Health Care, Financing Administration.

Approved: February 3, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-6067 Filed 3-19-87; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations; Florida et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2768.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.11.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.11 [Amended]

Section 65.11 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive ofifcer of community	Effective date of modification	Community No.
Florida: Collier (Docket No. FEMA-6904).	City of Naples	Oct. 30, 1986 and Nov. 6, 1986, *The Naples Daily News.*	The Honorable Edwin J. Putzell, Mayor, city of Naples, City Hall, 735 Eighth Street, South Naples, FL 33940.	Oct. 21 1986	125130
Georgia: Cobb (Docket No. FEMA-6900).	Unincorporated areas	Sept. 26, 1986, and Oct. 3, 1986, *Marietta Daily Journal.*	The Honorable Earl E. Smith, Chairman, Cobb County Board of Commissioners, 10 E. Park Square, P.O. Box 649, Marietta, GA 30090-9602.	Sept. 17, 1986	130052
Georgia: Glynn (Docket No. FEMA-6900).	Unincorporated areas	Oct. 2, 1986, and Oct. 9 1986, *Brunswick News.*	The Honorable Michael E. Harrison, Chairman, Board of Commissioner, P.O. Box 879, Brunswick, GA 31521.	Sept. 18, 1986	130092
Kansas: Cowley (Docket No. FEMA-6904).	City of Winfield	Oct. 16, 1986, and Oct. 23, 1986, *Winfield Courier.*	The Honorable Bill Dexter, Mayor, city of Winfield, P.O. Box 646, Winfield, KS 67156.	Oct. 3, 1986	200071
Texas: Harris (FEMA Docket No. 6904).	Unincorporated areas	Oct. 10, 1986, and Oct. 17, 1986, *The Houston Post.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, TX 77002.	Sept. 25, 1986	480287
Texas: Tarrant (FEMA Docket No. 6904).	City of Hurst	Oct. 10, 1986, and Oct. 17, 1986, *Mid-Cities Daily News.*	The Honorable William Souder, Mayor of the city of Hurst, 901 Precinct Line Road, Hurst, TX 76054.	Oct. 3, 1986	480601
Texas: Dallas (FEMA Docket No. 6728).	City of Irving	July 30, 1986, and Aug. 6, 1986, *Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the city of Irving, Dallas County, P.O. Box 2288, Irving, TX 75061.	July 11, 1986	480180 B
Texas: Dallas (FEMA Docket No. 6728).	City of Irving	Aug. 22, 1986, and Aug. 29, 1986, *Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the city of Irving, Dallas County, P.O. Box 2288, Irving, TX 75061.	August 18, 1986	480180

State and county	Location	Date and name of newspaper where notice was published	Chief executive ofifcer of community	Effective date of modification	Community No.
Texas: Dallas (FEMA Docket No. 6900).	City of Irving	Sept. 3, 1986, and Sept. 10, 1986 *Irving Daily News.*	The Honorable Bobby Joe Raper, Mayor of the city of Irving, Dallas County, P.O. Box 2288, Irving, TX 75061.	Aug. 26, 1986	480180

Issued: March 12, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-6058 Filed 3-19-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA-6908]

Changes in Flood Elevation Determinations; Florida et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2768.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participaton in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.11.

Pursuant to the provisions of 5 U.S.C. 605(b), the Andministrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.11 [Amended]

2. Section 65.11 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Santa Rosa	City of Gulf Breeze	Jan. 1, 1987, and Jan. 8, 1987, *The Sentinel.*	Honorable Ed Gray, III, Mayor, City of Gulf Breeze, City Hall, P.O. Box 640, Gulf Breeze, FL 32561.	Dec. 22, 1986	120275
Illinois: Kane	Unincorporated Areas	Jan. 10, 1987, and Jan. 17, 1987, *Cardunal Free Press.*	The Honorable Frank R. Miller, Chairman, Kane County Board, Kane County Government Center, 719 Batavia Avenue, Geneva, IL 60134.	Jan. 6, 1987	170896
Minnesota: Washington	City of Bayport	Mar. 6, 1987, and Mar. 13, 1987, *Stillwater Gazette.*	The Honorable Nathan R. Bliss, Mayor, city of Bayport, City Hall, 294 North Third Street, Bayport, MN 55003.	Feb. 23, 1987	275229

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Minnesota: Washington	City of Lake St. Croix Beach	Mar. 6, 1987, and Mar. 13, 1987, *Stillwater Gazette.*	The Honorable John E. Jansen, Mayor, city of Lake St. Croix Beach, City Hall, 1919 Quebec Avenue South, Lakeland, MN 55043.	Feb. 23, 1987	275240
Minnesota: Washington	City of Lakeland	Mar. 6, 1987, and Mar. 13, 1987, *Stillwater Gazette.*	The Honorable E. Graig Morris, Mayor, city of Lakeland, City Hall, 690 Quinnell Avenue North, Lakeland, MN 55043.	Feb. 23, 1987	275238
Minnesota: Washington	City of Lakeland Shores	Mar. 6, 1987, and Mar. 13, 1987, *Stillwater Gazette.*	The Honorable Leonard Boesel, Mayor, city of Lakeland Shores, 16755 Third Street North, Lakeland Shores, MN 55043.	Feb. 23, 1987	275239
New Jersey: Atlantic	City of Brigantine	Feb. 13, 1987, and Feb. 20, 1987, *The Press.*	The Honorable J. Edward Kline, Mayor of the city of Brigantine, 1417 West Brigantine Avenue, Brigantine, NJ 68203.	Feb. 4, 1987	345286
North Carolina: Guilford	Unincorporated areas	Jan. 2, 1987, and Jan. 9, 1987, *Greensboro News and Record.*	Honorable John Witherspoon, County Manager, Guilford County, P.O. Box 3427, Greensboro, NC 27402.	Dec. 22, 1986	370111
Pennsylvania: Berks	Township of Cumru	Mar. 17, 1987, and Mar. 24, 1987, *Reading Times.*	The Honorable Richard Venne, president of the Township of Cumru Board of Commissioners, Berks County, R.D. 3005, Mohnton, PA 19540.	Mar. 6, 1987	420130
Texas: Bexar	Unincorporated areas	Feb. 27, 1987, and Mar. 6, 1987, *San Antonio Light.*	The Honorable Tom Vickers, Bexar County Judge, Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, TX 78205.	Feb. 19, 1987	480035
Texas: Harris	Unincorporated areas	Jan. 26, 1987, and Feb. 2, 1987, *The Houston Post.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, TX 77002.	Jan. 13, 1987	480287
Texas: Harris	Unincorporated areas	Feb. 10, 1987, and Feb. 17, 1987, *The Houston Post.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, TX 77002.	Feb. 4, 1987	480287
Texas: Harris, Fort Bend, and Montgomery	City of Houston	Feb. 10, 1987, and Feb. 17, 1987, *Houston Post.*	The Honorable Kathryn J. Whitmire, Mayor of the City of Houston, P.O. Box 1562, Houston, TX 77251.	Feb. 2, 1987	480296
Texas: Tarrant and Johnson	City of Mansfield	Jan. 22, 1987, and Jan. 29, 1987, *Mansfield News-Mirror.*	The Honorable Wayne Wilshire, Mayor of the city of Mansfield, 1305 East Broad Street, Mansfield TX 76063-1896.	Jan. 13, 1987	480606
Texas: Harris	City of Pasadena	Feb. 27, 1987, and Mar. 6, 1987, *Pasadena Citizen.*	The Honorable John Ray Harrison, Mayor of the city of Pasadena, P.O. Box 672, Pasadena, TX 77501.	Feb. 11, 1987	480307
Texas: Bexar	City of San Antonio	Feb. 27, 1987, and Mar. 6, 1987, *San Antonio Light.*	The Honorable Henry Cisneros, Mayor of the city of San Antonio, P.O. Box 9066, San Antonio, TX 78285.	Feb. 19, 1987	480045

Issued: March 12, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-6059 Filed 3-19-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
CALIFORNIA	
Nevada County (unincorporated areas) (FEMA Docket No. 6905)	
Donner Creek:	
1,680 feet downstream of confluence with Cold Creek	*5,898
40 feet upstream from the Center of Cold Stream Road	*5,919
430 feet upstream of Cold Stream Road	*5,921
Donner Lake: At Intersection of South Shore and Cedar Drives	*5,938
Summit Creek:	
At mouth (Donner Lake)	*5,938
2,740 feet upstream of Summit Creek Drive	*6,108
Maps are available for inspection at the Planning Department, 700 Zion Street, Nevada City, California.	
FLORIDA	
Hastings (town), St. Johns County (FEMA Docket No. 6901)	
West Run Cracker Branch:	
About 500 feet downstream of State Road 207	*8
About 950 feet upstream of State Road 207	*9
St. Johns River: At intersection of First Street and Church Street	*6
Maps available for inspection at the Clerks Office, P.O. Box 427, Hastings, Florida.	
Temple Terrace (city), Hillsborough County (FEMA Docket No. 6729)	
Hillsborough River:	
About 1,500 feet downstream of 56th Street	*23
Just downstream of Fowler Avenue	*29
Maps available for inspection at the City Clerk's Office, P.O. Box 16960, Temple Terrace, Florida.	
MINNESOTA	
Rochester (city), Olmsted County (FEMA Docket No. 6905)	
Cascade Creek Split Flow:	
About 160 feet upstream of confluence with Cascade Creek	*1,000
About 670 feet upstream of confluence with Cascade Creek	*1,002
Just upstream of U.S. Highway 52	*1,006
Maps available for inspection at the Department of Planning and Zoning, 1421 3rd Avenue SW., Rochester, Minnesota.	
NEW JERSEY	
Belleville (town), Essex County (FEMA Docket No. 6905)	
Second River: Upstream side of Mills Ridge Street at the upstream corporate limits	*104
Maps available for inspection at the Town Engineering Department, 383 Washington Avenue, Belleville, New Jersey.	
Bloomfield (township), Essex County (FEMA Docket No. 6905)	
Third River:	
Downstream corporate limits	*82
Upstream side of Garden State Parkway	*102
Confluence with Third River Tributary No. 1	*139
Downstream side of Broughton Avenue	*160
Upstream corporate limits	*184
Third River Tributary No. 1:	
Confluence with the Third River	*139
Approximately .4 mile upstream of the confluence with Third River	*144
Second River:	
Downstream corporate limits	*104
Upstream side of Bloomfield Avenue	*117

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Upstream side of Glenwood Avenue	*124
Upstream corporate limits	*132
Second River Tributary:	
Confluence with Second River	*118
Upstream corporate limits	*126
Maps available for inspection at the Municipal Building, Municipal Plaza, Bloomfield, New Jersey.	
Hopewell (Township), Mercer County (FEMA Docket No. 6905)	
Delaware River:	
Downstream corporate limits	*48
Approximately .5 mile upstream of confluence of Moore Creek	*61
Upstream corporate limits	*64
Stony Brook:	
Approximately .3 mile downstream of Old Mill Road	*142
At confluence of Baldwins Creek	*153
Approximately 300 feet upstream of CONRAIL	*171
Upstream corporate limits	*207
Jacobs Creek:	
Just upstream of confluence with Delaware River	*48
Approximately 300 feet downstream of confluence of Ewing Creek	*66
Ewing Creek:	
At Jacobs Creek Road	*68
Approximately 250 feet upstream of Nursery Road	*121
Approximately 650 feet downstream of Scotch Road	*149
Approximately 95 feet upstream of Scotch Road	*154
Beden Brook:	
Approximately 950 feet upstream of Province Line Road	*117
Upstream side of Aunt Molly Road	*127
Approximately 300 feet upstream of Mount-Rose-Hopewell Road	*142
Approximately 600 feet downstream of upstream corporate limits	*163
Maps available for inspection at the Hopewell Township Municipal Building, Route 546 & Scotch Road, Titusville, New Jersey.	
Lawrence (township), Mercer County (FEMA Docket No. 6905)	
Stony Brook:	
At downstream corporate limits	*114
Approximately 380 feet upstream of dam	*130
At upstream corporate limits	*135
Maps available for inspection at the Town Hall, 2207 Lawrence Road, Lawrenceville, New Jersey.	
Montclair (township), Essex County (FEMA Docket No. 6905)	
Third River:	
Downstream corporate limits	*198
Upstream corporate limits	*218
Second River:	
Downstream corporate limits	*192
Upstream side of Willow Street	*251
Approximately 60 feet downstream of Park Street	*279
Nishuane Brook:	
Downstream corporate limits	*166
Upstream side of Madison Avenue	*235
Maps available for inspection at the Planning Department, 205 Claremont Avenue, Montclair, New Jersey.	
NEW YORK	
Brightwaters (village), Suffolk County (FEMA Docket No. 6901)	
Great South Bay:	
At intersection of South Bay Avenue and Shore Road	*7

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Shoreline at Concourse East (extended)	*9
Maps available for inspection at the Village Hall, 40 Seneca Drive, Brightwaters, New York 11718.	
Glenville (town), Schenectady County (FEMA Docket No. 6905)	
Alplaus Kill:	
Upstream side of Glenridge Road	*228
Upstream side of Delaware and Hudson Railroad	*231
Maps available for inspection at the Town Hall, 18 Glenridge Road, Glenville, New York.	
Islip (town), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean:	
Atlantic Ocean shoreline at Atlantic Avenue, extended	*15
Intersection of Beachwood Avenue and Neptune Walk	*10
Great South Bay:	
Shoreline at East Bay Street, extended	*10
Intersection of Tower Mews Avenue and Forest Drive	*4
Maps available for inspection at the Planning Department, Town Hall, 655 Main Street, Islip, New York.	
OHIO	
Groveport (village), Franklin County (FEMA Docket No. 6905)	
Blacklick Creek:	
About 1.2 miles downstream of Hamilton Road	*729
About 500 feet upstream of U.S. Route 33	*746
Tributary J:	
At mouth	*737
About 2,150 feet upstream of mouth	*740
Maps available for inspection at the Zoning Commission, 605 Cherry Street, Groveport, Ohio.	
PENNSYLVANIA	
Altoona (city), Blair County (FEMA Docket No. 6901)	
Mill Run:	
At downstream corporate limits	*1,052
Approximately 175 feet downstream of Logan Boulevard	*1,070
Approximately 170 feet downstream of Union Avenue (upstream crossing)	*1,107
Approximately 115 feet downstream of CONRAIL	*1,147
At upstream corporate limits	*1,192
Maps available for inspection at the City Hall, Altoona, Pennsylvania.	
Reading (city), Berks County (FEMA Docket No. 6905)	
Schuylkill River:	
2,540 feet downstream of CONRAIL bridge	*218
Downstream side of CONRAIL bridge	*223
1,130 feet upstream of Warren Street Bypass bridge	*225
2,030 feet upstream of Warren Street Bypass bridge	*225
2,630 feet upstream of Warren Street Bypass bridge	*227
Upstream corporate limits	*227
Tulpehocken Creek:	
0.19 mile upstream of the mouth	*214
Upstream corporate limits	*214
Maps available for inspection at the City Hall, 815 Washington Street, Reading, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
SOUTH CAROLINA	
Richland County (unincorporated areas), (FEMA Docket No. 6905)	
Little Jackson Creek:	
At mouth	*204
Just upstream of Two Notch Road	*211
About 400 feet downstream of Creekwood Avenue	*220
Just upstream of Creekwood Avenue	*225
About 1,950 feet downstream of Rabon Road	*243
Lightwood Knot Branch:	
At confluence with Little Jackson Creek	*214
Just downstream of Interstate 20	*221
Maps available for inspection at the County Administrator's Office, Richland County, P.O. Box 192, Columbia, South Carolina.	
TEXAS	
Alvin (city), Brazoria County (FEMA Docket No. 6901)	
Mustang Bayou:	
Approximately 1,000 feet upstream of most upstream crossing of Atchison, Topeka and Santa Fe Railway	*47
At upstream corporate limits	*47
Sheet Flow: Intersection of State Route 1462 and Parker Road	*1
Sheet Flow: Between Verhalen Road and corporate limits	*1
Sheet Flow: Intersection of Friendswood Road and State Route 35	*1
Approximately 500 feet west along South Street from intersection of South Street and Tracy Lynn Lane	*2
Maps available for inspection at the City Hall, 216 West Sealy, Alvin, Texas.	
Edinburg (city), Hidalgo County (FEMA Docket No. 6729)	
Ponding Area: East of Jackson Road and north of Pin Oak Road	*98
Maps available for inspection at the City Hall, 117 North 10th Street, Edinburg, Texas.	
Plano (city), Collin and Denton Counties (FEMA Docket No. 6901)	
Rowlett Creek:	
Downstream side of Los Rios Boulevard	*526
At confluence of Stream 2D8	*536
Spring Creek:	
Approximately 1,500 feet upstream of Dallas North Parkway	*600
Upstream side of West 16th Street	*609
Prairie Creek:	
Approximately 1,000 feet upstream of Independence Parkway	*687
Approximately 250 feet downstream of Park Boulevard	*706
Maps available for inspection at the City Hall, City Manager's Office, 1520 Avenue K, Plano, Texas.	
VIRGINIA	
Hampton (city) (FEMA Docket No. 6901)	
Chesapeake Bay:	
Stony Point	*11
Intersection of Adriatic Drive and Lighthouse Drive	*9
Intersection of Olde Buckingham Road and Tyburn Court	*9
Intersection of Port Comfort Avenue and Resort Boulevard	*9
Intersection of Newburn Avenue and Fort Worth Street	*9
Maps available for inspection at City Hall, Planning Department, Hampton, Virginia.	

Issued: March 11, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-6060 Filed 3-19-87; 8:45 am]

BILLING CODE 6718-0-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

Modification of Footnotes US7 and US228 to Table of Frequency Allocations in the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends Part 2 of its Rules to modify footnotes US7 and US228 to the Table of Frequency Allocations. These footnotes provide coordination procedures to protect government radar operations in the 420–450 MHz band. Government administrative changes, a new point of contact for coordination, require editorial modification of these footnotes.

EFFECTIVE DATE: April 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Engineering and Technology, (202) 653-8112.

SUPPLEMENTARY INFORMATION:

Order

In the matter of Amendment of Part 2 to modify footnotes US7 and US228 to the Table of Frequency Allocations.

Adopted: March 3, 1987.

Released: March 16, 1987.

By the Managing Director: 1. Footnotes US7 and US228 provide coordination procedures to protect government radar operations around certain military facilities in the 420–450 MHz band. The U.S. Air Force has recently made administrative changes with regard to the point of contact for these coordination procedures. Therefore, it is necessary to modify footnotes US7 and US228 to the Table of Frequency Allocations. Section 2.106 of the Commission's Rules, to reflect the new point of contact.

2. This action is considered to be editorial in nature. Accordingly, it is ordered, that pursuant to authority of 47 U.S.C. Sections 154(i), 302, and 303, and pursuant to Section 0.231(d) of the Commission's Rules, Part 2 of the Commission's Rules and Regulations is amended as shown below. This amendment becomes effective April 22, 1987.

List of Subjects in 47 CFR Part 2

Frequency allocation; Radio.

Rule Changes

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS.

1. The authority citation for Part 2 continues to read:

Authority: 47 U.S.C. 154, 303,

2. Section 2.106 is amended by revising the introductory paragraph and paragraphs (g) and (h) in footnote US7 and by revising paragraphs (g) and (h) in footnote US228 as follows:

§ 2.106 Table of frequency allocations

* * * * *

United States (US) Footnotes

* * * * *

US7—In the band 420–450 MHz and within the following areas, the peak envelope power output of a transmitter employed in the amateur service shall not exceed 50 watts, unless expressly authorized by the Commission after mutual agreement, on a case-by-case basis, between the Federal Communications Commission Engineer in Charge at the applicable district office and the military area frequency coordinator at the applicable military base. For areas (e) thru (j), the appropriate military coordinator is located at Peterson AFB, CO.

* * * * *

(g) In the State of Alaska within a 160 kilometer (100 mile) radius of Clear, Alaska (latitude 64 degrees, 17' north, longitude 149 degrees 10' west).

(h) In the State of North Dakota within a 160 kilometer (100 mile) radius of Concrete, North Dakota (latitude 48 degrees 43' north, longitude 97 degrees 54' west).

* * * * *

US228

* * * * *

(g) In the state of Alaska within a 160 kilometer (100 mile) radius of Clear, Alaska (latitude 64 degrees 17' north, longitude 149 degrees 10' west).

(h) In the state of North Dakota within a 160 kilometer (100 mile) radius of Concrete, North Dakota (latitude 48 degrees 43' north, longitude 97 degrees 54' west).

* * * * *

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

[FR Doc. 87-6097 Filed 3-19-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-235; RM-5110]

Radio Broadcasting Services; Anderson, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 234C2 for Channel 232A at Anderson, CA, and modifies the Class A license for Station KEWB(FM), in response to a petition filed by Prather-Breck Broadcasting, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-235, adopted February 5, 1987, and released March 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

In § 73.202(b), the FM Table of Allotments is amended, under California, by substituting Channel 234C2 for Channel 232A at Anderson.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-6096 Filed 3-19-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-250; RM-5234]

Radio Broadcasting Services; Belle Chasse, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 275A to Belle Chasse, Louisiana, as that community's first FM channel in response to a petition filed by Bridget Vinson. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 27, 1987. The window period for filing applications will open on April 28, 1987, and close on May 27, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-250, adopted February 5, 1987, and released March 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202, the Table of FM Allotments is amended by adding the entry of Channel 275A to Belle Chasse, Louisiana.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-6093 Filed 3-19-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-892; RM-4790 and RM-4795]

Television Broadcasting Services; Grand Junction, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses, at the request of the petitioner, a petition for rule making to assign Channel 2 to Grand Junction, Colorado, and assigns, over opposition comments, Channel 4* to Grand Junction. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 16, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, (202) 634-6350, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 84-892, adopted February 4, 1987, and released March 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. In § 73.606(b), the Table of Assignments is amended, under Colorado, by adding Grand Junction, Channel 4*.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-6095 Filed 3-19-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 244

Federal Acquisition Regulation Supplement; Subcontracting Policies and Procedures

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: Revisions are made to the subcontract administration provisions of the DoD FAR Supplement to clarify contracting officer responsibilities in reviewing prime contractor administration of subcontractor progress payments. This final rule supplements the final rule for FAR Case 86–55 (Item VII of Federal Acquisition Circular (FAC) No. 84–25), published elsewhere in this publication.

EFFECTIVE DATE: March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY IMFORMATION:

A. Background

A recent DoD IG report identified instances where prime contractors had not reviewed subcontractor progress payment requests to ensure that the requested amounts were proper. This coverage is issued to make sure that the contracting officer ensures that the contractor has an adequate system for reviewing and administering progress payments to its subcontractors.

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The December 31, 1986 revision of the CFR is the most recent edition of that title.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Regulatory Flexibility Act

This coverage is not required to be published for public comment under Pub. L. 98–577 as it affects only the internal operating procedures of the Federal Government. Therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 244

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, the DoD FAR Supplement is amended as set forth below.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR Part 244 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 244.304 is amended by deleting the words "advance payments, progress payments," from paragraph (b)(1)(xvi), by deleting the word "and" from paragraph (b)(1)(xx), by removing the period at the end of paragraph (b)(1)(xxi) and inserting a semi-colon and the word "and", and by adding a new paragraph (b)(1)(xxii) to read as follows:

244.304 Surveillance.

* * * * *

(b) * * *

(xxii) Management control systems, including internal audit procedures, to administer progress payments to subcontractors.

* * * * *

[FR Doc. 87–6001 Filed 3–19–87; 8:45 am]

BILLING CODE 3810–01–M

Proposed Rules

Federal Register
Vol. 52, No. 54
Friday, March 20, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

Programs for Specific Positions and Examinations (Miscellaneous); Appointment, Pay, and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations governing the appointment, pay, and removal of administrative law judges. These proposed regulations update and revise outdated terminology. They also clarify OPM's responsibilities concerning administrative law judges. The proposed regulations continue the basic thrust of the current regulations—to make administrative law judges largely independent in matters of tenure and compensation as required by the Administrative Procedure Act (APA) of 1946.

DATE: Comments must be received on or before May 19, 1987.

ADDRESS: Send or deliver written comments to the Office of Administrative Law Judges, Career Entry Group, Office of Personnel Management, Room 2433, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Craig B. Pettibone, Assistant Director for Administrative Law Judges (202) 632-5677.

SUPPLEMENTARY INFORMATION:

Background and General Information

The administrative law judge function, as we know it today, was established by the APA of 1946 (60 Stat. 237). In general, administrative law judges prepare for and preside at formal hearings, which agencies are required by statute to hold. They are required to either make or recommend initial decisions to agency heads on the basis of the records they develop. Although the final decision almost always reposes by law in the agency head, it is not uncommon for decisions of administrative law judges to be adopted in whole by the secretaries, directors, commissions, and other agency decisionmakers, sole or collegial, to whom administrative law judges report. When such agency decisions become final, they may typically be appealed to the Federal District Courts, or in some cases, directly to the United States Courts of Appeals.

The former Civil Service Commission (CSC) was given the responsibility for appointment, interagency detail, exemption from agency performance appraisal, prescription of pay, reduction in pay, and removal of administrative law judges (formerly hearing examiners) by the APA of 1946. However, the Civil Service Reform Act of 1978 amended the APA to transfer responsibility for appointment, detail, exemption from agency performance appraisal, and prescribing of pay of administrative law judges to OPM, and to transfer responsibility for removal and reduction in pay of administrative law judges to the Merit Systems Protection Board (MSPB).

The APA makes administrative law judges largely independent in matters of tenure and compensation by exempting them from agency performance appraisals, by providing for OPM to administer merit selection and pay systems for administrative law judges, and by providing for the MSPB to review agency-proposed removal and reduction in pay actions against administrative law judges. Also, the APA confers on administrative law judges independence of action in conducting formal APA proceedings. However, administrative law judges are still agency employees appointed by agencies; they preside at and regulate the course of hearings, subject to the published regulations of the agency; and, in the exercise of their non-adjudicatory responsibilities, they are subject to the general administrative direction of agencies which appoint them. This unique independent status of administrative law judges was specifically recognized in a January 18, 1977 opinion of the Attorney General (43 OpAG No. 9).

Anyone who wishes to become an administrative law judge must pass a competitive examination administered by OPM or be otherwise found qualified for appointment by OPM. This examination is the only competitive examination which OPM is absolutely precluded from delegating to other agencies, 5 U.S.C. 1104(a)(2). Administrative law judges are excluded from the performance appraisal system under 5 U.S.C. 4301(2)(D), and from appraisal evaluations for within-grade pay advances under 5 U.S.C. 5335(a)(3)(B). Administrative law judge positions are also excluded from the Senior Executive Service under 5 U.S.C. 3132(2)(ii).

Although administrative law judges are appointed by agencies under 5 U.S.C. 3105, they may be paid only as prescribed by OPM, independently of agency recommendations or ratings under 5 U.S.C. 5372. Administrative law judges may be loaned or detailed to other agencies to conduct formal proceedings only on prior selection by OPM under 5 U.S.C. 3344. Administrative law judges cannot have their pay reduced or be removed [except for reduction-in-force (RIF) and national security reasons] without opportunity for prior hearing on the record establishing good cause before the MSPB under 5 U.S.C. 7521.

Administrative law judges appointed under 5 U.S.C. 3105 must be assigned to cases in rotation, so far as practicable, and they may not perform duties inconsistent with their responsibilities as administrative law judges. Cases assigned to administrative law judges are to be heard and decided on the record in accordance with the provisions of 5 U.S.C. 556 and 557 and the published regulations of the agency. Also, under 5 U.S.C. 556(b), administrative law judges cannot be disqualified from a case except by petition, to be decided as part of the record and decision in the case. Further, under 5 U.S.C. 554(d), administrative law judges are made independent of agency investigative and prosecutorial personnel. Such personnel are precluded from participating or advising in a particular case being heard by an administrative law judge, except as counsel or witness in public proceedings.

For purposes of appointment, detail from one agency to another, exemption from agency performance appraisal, and prescription of pay of administrative law judges, OPM has authority under 5

U.S.C. 1305 to investigate, require reports by agencies, issue reports, prescribe regulations, appoint advisory committees, recommend legislation, subpoena witnesses and records, and pay witness fees as established for the courts of the United States. Section 1305 also gives MSPB similar investigative and rulemaking authority with respect to proposed removal and reduction-in-pay actions arising under 5 U.S.C. 7521.

Finally, under 5 U.S.C. 3323(b) and such regulations as OPM may prescribe, retired administrative law judges may be temporarily reemployed as administrative law judges.

Discussion of Proposed Revisions

Regulations in Subpart B of Part 930, Title 5, Code of Federal Regulations, governing the appointment, pay, and removal of administrative law judges employed by departments and agencies of the U.S. Government, were first published by the former CSC on September 23, 1947, at 12 FR 6321. Since that time, these regulations have been amended several times, but they have not been reviewed or updated in their entirety. Therefore, OPM has reviewed these regulations and proposes to make a number of clarifying and updating revisions designed to improve program administration.

The revised regulations continue the basic thrust of current regulations to assure that administrative law judges will be largely independent in matters of tenure and compensation as required by the APA. Accordingly, these proposed regulations continue to require agencies to obtain advance approval from OPM before any individual may be appointed, transferred, or reinstated to an administrative law judge position. Generally, OPM's approval of such actions is conditioned on the agency demonstrating a need to fill the position and the individual involved meeting current qualification requirements in Examination Announcement No. 318. Also, agencies are required to obtain advance approval from OPM for reassignments among administrative law judge positions within an agency. OPM approval of such reassignments is conditioned on their being for bona fide management reasons and in accordance with regular civil service procedures and merit systems principles. Further, agencies are required to obtain prior approval from OPM for promotion of administrative law judges within an agency. Such approval is conditioned on OPM finding that the agency has hearing work which may be properly classified at the higher grade level, and on the individual involved meeting current qualification requirements.

Except as otherwise provided in this subpart, the rules and regulations applicable to positions in the competitive service apply to administrative law judge positions. Section 930.201, Coverage, so provides and is not changed.

Section 930.202, *Definitions,* is changed to bring the definition of "removal" into conformity with a provision of the Civil Service Reform Act (CSRA) of 1978. CSRA amended 5 U.S.C. 7521 to include suspension, reduction in grade, reduction in pay, and furlough of 30 days or less, along with removal, as separate personnel actions for which administrative law judges are guaranteed a pre-action hearing before MSPB. Therefore, it is no longer necessary or appropriate to include these separate personnel actions in the definition of "removal" in OPM's regulations, and they are accordingly being deleted from the definition. However, as explained below, procedures for removal in § 930.214 are broadened to specifically include these other actions.

Several new provisions are inserted in § 930.203 to make conforming changes related to implementation by OPM of a new administrative law judge examination in 1984. As explained in OPM Examination Announcement No. 318, the new administrative law judge examination is open periodically as announced by OPM, rather than continuously as in the past. The new examination initially considers applicants for a basic rating based on an evaluation of their qualifying experience, and then considers for a final rating—through a written demonstration, panel interview, and personal reference inquiry—as many of the applicants with the highest basic ratings, agumented by veterans preference if applicable, as needed to meet anticipated agency hiring needs in various geographic areas. Each stage of the new examination is described in the expanded regulation.

The existing provisions of § 930.203 governing appointment to administrative law judge positions are continued in a new § 930.203(b), with minor editorial changes. These provisions provide that administrative law judges are given career absolute appointments without going through a probationary period. Also, OPM approval of administrative law judge appointments is conditioned on agencies demonstrating that their hearing work load requires that appointment be mde and on proposed appointees meeting examination requirements. Further, these provisions authorize OPM to approve an agency recommendation to appoint as an administrative law judge the incumbent of a position which is newly classified as an administrative law judge position by legislation, Executive order, or decision of a court. As in the past, the incumbents of such positions may be appointed as administrative law judges only if OPM approves their qualifications for such positions as provided in OPM Examination Announcement No. 318.

Section 930.203a, *Title of administrative law judge,* is renumbered § 930.203b. The section provides that the title "administrative law judge" is the official class title for administrative law judge positions. For "personnel, budget, and fiscal purposes," agencies are prohibited from referring to any other positions as "judge" positions, in accordance with 5 U.S.C. 5105(c). However, the previous general regulatory proscription on agency use of the word "judge" in connection with "any other position for any purpose" is deleted. A July 14, 1977, letter from Attorney General Edward H. Levi to CSC Chairman Robert E. Hampton, held that CSC (now OPM) had no authority under 5 U.S.C. 5105(c) for such a broad proscription because the statute specifically provides that it "does not prevent the use of organizational or other titles for internal administration, public convenience, law enforcement or similar purposes."

Section 930.204(a) is rewritten into two new paragraphs (a) and (b) to clarify that (a) OPM determines which administrative law judges get promoted to positions classified at a higher grade based on the substantive and technical nature of the positions; (b) agencies determine which adminstrative law judges get promoted to chief administrative law judge positions classified at a higher grade based on managerial and administative duties and responsibilities. The former OPM responsibility is based on a February 23, 1951, opinion of the Attorney General (41 OpAG 74), while the latter agency responsibility is based on a November 24, 1964 opinion of the Attorney General (42 OpAG 289).

Paragraph (b) of § 930.204, redesignated as paragraph (c), provides for the promotion of administrative law judges to reclassified or vacant administrative law judge positions. It is revised consistent with changes made in the administrative law judge examination in 1984. It permits promotion within an agency from one grade level to a higher level, provided the administrative law judge meets qualification requirements for

appointment at the higher level as provided in OPM Examination Announcement No. 318—currently 7 years of administrative law and/or litigation experience, and completion of 1 year's service as an administrative law judge. Since the implementation of the new administrative law judge examination in 1984, it is no longer necessary as it was under the old examination for an incumbent administrative law judge to take and pass the examination anew to be eligible for promotion to the higher grade level.

The provisions in § 920.205 continue to require agencies to obtain pior approval from OMP for reassignment of administrative law judges from one administrative law judge position to another. This section is amended to clarify that it applies to reassignments within an agency, as distinguished from transfers among agencies under § 930.206. Further, the proposed regulations require that reassignment must not only be in accordance with regular civil service procedures, but also with merit system principles and for bona fide management reasons.

Provisions on transfer of administrative law judges from one agency to another in § 930.206, and on reinstatment of former administrative law judges in § 930.207, continue to require OPM's prior approval of such actions. OPM needs to check the qualifications of any new judge whom an agency proposes to hire by transfer or reinstatement, and to give priority consideration required by § 930.215 to any administrative law judges separated, furloughed for more than 30 days, or demoted under 5 U.S.C. 7521. Therefore, these provisions continue to provide that administrative law judges are eligible for transfer, with or without promotion, and that former administrative law judges are eligible for reinstatement, provided they meet the current qualification requirements for appointment to an administrative law judge position as provided in OPM Examination Announcement No. 318. Current and former administrative law judges who meet current qualification requirements, and who complete 1 year's service as an administrative law judge, do not have to take the examination again to be eligible for transfer or reinstatement. With this revision, paragraph (b) of § 930.207, which provided for the reinstatement as an administrative law judge of any person serving as Director of OPM's Office of Administrative Law Judges notwithstanding the provisions of this section, is no longer necessary and is, accordingly, deleted.

Section 930.208 continues to provide that Parts 352 and 353, Chapter 1, Title 5, Code of Federal Regulations, governing reemployment rights and restoration to duty, respectively, apply to administrative law judge positions. However, new language is added to clarify that restoration to duty provisions apply to recovery of administrative law judges from compensable injury, as well as to their return from military service.

Section 930.209(a), providing that an agency may not detail an employee who is not an administrative law judge to an administrative law judge position, and § 930.209(b), limiting the circumstances under which an agency may detail an administrative law judge to other duties not inconsistent with those of an administrative law judge, are not changed. However, a new § 930.209(d) is added to clarify that an agency, without the prior approval of OPM, may detail an administrative law judge from one administrative law judge position to another, in the same agency, provided the detail is in accordance with regular civil service procedures. Details of administrative law judges occur with considerably less frequency than reassignments, for which OPM approval is required, and are temporary rather than permanent. Details do not impact on tenure in the same manner as reassignments. Accordingly, approval of details is considered to be an administrative matter of the kind that the APA left to the descretion of the agency employing the administrative law judge in accordance with regular civil service procedures.

Provisions in § 930.210 continue to repeat the statutory requirements that OPM will classify administrative law judge positions, that administrative law judges are entitled to automatic within-grade increases without their agency heads having to determine if they are working at an acceptable level of competence, and that an agency will not grant a quality increase of a monetary or honorary award for superior accomplishment by an administrative law judge, in the performance of judicial responsibilities. Section 930.210 further provides as it has before that, upon appointment, an administrative law judge will be paid at the minimum rate of the grade approved by OMP unless the administrative law judge is eligible for a higher rate because of prior Federal Government service.

In addition, a new position is added to § 930.210 which would permit an agency to pay a newly hired administrative law judge from the private sector or State or local government a higher than minimum rate for the established grade level, currently GS–15 and GS–16. In order to pay such higher rate of pay, the agency would have to persuade OPM that such action is clearly warranted to meet the needs of the Federal Government for hiring superiorly qualified administrative law judge candidates whose existing pay or earning power is higher than the minimum rate for the grade. This change would help the Government to attract and retain superiorly qualified applicants from the private sector and State and local governments. Such applicants, unlike similarly qualified Government attorneys who are entitled to be paid their highest previous rate in the grade, have had to take a pay cut to the minimum rate for the established grade level to become administrative law judges. Superior qualifications for applicants would include such factors as legal practice before or with the hiring agency, practice in another forum involving issues of concern to the hiring agency, or having an outstanding reputation among others in the field. Use of this authority would be the exception, not the rule.

Section 930.211 continues to repeat the statutory requirement that an agency may not rate the peformance of an administrative law judge. Section 930.212 continues to repeat the statutory requirement that, insfar as practicable, an agency shall assign its administrative law judges to cases in rotation. Section 930.213 continues to repeat the statutory requirement that at the request of an agency that is occasionally or temporarily insufficiently staffed, OPM shall provide for the temporary use by the agency of the services of an administrative law judge of another agency, subject to the consent of the loaning agency. New provisions are also added to § 930.213 asking the requesting agency to identify and describe briefly the nature of the case(s) to be heard (including parties and representatives when available) and the legal authority under which the use of an administrative law judge is required.

Section 930.214 continues to repeat the statutory requirement and regulatory procedures under which an agency may remove an administrative law judge only for good cause, established and determined by the MSPB on the record and after opportunity for hearing before the MSPB is provided in its regulations, §§ 1201.131 through 1201.136, Title 5, Code of Federal Regulations. Also, these same provisions are specifically extended to "suspension," "reduction in

pay," "reduction in grade," and "furlough of 30 days or less," in conformance with the 1978 CSRA amendment which specifically gave these actions the same procedural protections as removal actions.

RIF procedures for administrative law judges continue to be provided in § 930.215. As before, except as provided in this section, RIF procedures under Part 351, Chapter 1, Title 5, Code of Federal Regulations, apply to administrative law judges who are notified they are to be separated, furloughed for more than 30 days, or demoted because of a RIF. This section continues to provide that administrative law judges are to be placed in separate retention groups, without additional retention credit based on performance appraisals which are prohibited, and listed on a Governmentwide OPM priority referral list for administrative law judges. In addition, new language is added stating specifically that administrative law judges who are reached for separation are to be placed (1) on agency reemployment priority lists; and (2) in the agency and OPM priority placement programs.

New RIF provisions are also added to § 930.215 to incorporate and clarify certain provisions of FPM Letter 930–15, issued May 27, 1982. These proposed regulations, like the FPM Letter, and like § 330.306 of Title 5, Code of Federal Regulations, for RIF's employees generally, limit priority referral RIF'd administrative law judges to a period of 2 years. In addition, the proposed regulations allow RIF'd administrative law judges to state a geographic preference in priority referral for vacant positions at any grade level, rather than as under the FPM Letter only at one grade lower than the grade level held when reached for RIF. Also, the proposed regulations include a new provision which allows RIF'd administrative law judges one declination of an offer of reemployment, at or above the grade level held when reached for RIF, without removal from the OPM priority referral list.

The proposed RIF provisions in § 930.215 do not include the provision of the current regulation and letter which require OPM to add displaced administrative law judges on the top of the open competitive administrative law judge register and to rank administrative law judges entitled to priority when less than three names remain on the priority referral list. Instead, the proposed regulations would require that so long as an administrative law judge is entitled to priority consideration, an agency may fill a vacant administrative law judge position only by selection from the OPM priority referral list, unless it obtains prior approval from OPM to fill it by selection from a certificate of eligibles, by promotion, by transfer, or by reinstatement in the extraordinary circumstance that other candidates possess superior experience and qualifications.

Section 930.216, governing the temporary reemployment of retired administrative law judges, is restated in its entirety (with minor editorial changes), as recently published at 50 FR 15407 on April 18, 1985. These provisions were published to implement the provisions of Pub. L. 98–724, signed March 2, 1984, which authorized the temporary reemployment of retired administrative law judges.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities because it only affects personnel provisions under which Federal administrative law judges are appointed, paid, and removed.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Accordingly, OPM proposes to revise Subpart B of Part 930 to read as follows, with deletions in brackets [ ] and additions in arrows ► ◄:

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

General Provisions

Sec.

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

Authority: 5 U.S.C. ►1104(a)(2),◄ 1305, 3105, ►3323(b),◄ 3344, ►4301(2)(D),◄ 5335►(a)(B),◄ 5372, 7521.

General Provisions

§ 930.201 Coverage.

(a) This subpart applies to [persons] ►people◄ appointed under [section 3105 of title 5, United States Code.] ►5 U.S.C. 3105◄ for proceedings required to be conducted in accordance with [sections 556 and 557 of that title] ►5 U.S.C. 556 and 557◄, and to administer law judge positions.

(b) Except as otherwise provided in this subpart, the rules and regulations applicable to positions in the competitive service apply to administative law judge positions.

§ 930.208 Definitions.

In this subpart [:] ►—◄

(a) "Agency" has the ►same◄ meaning ►as◄ given [it by section 551 of title 5, United States Code] ►in 5 U.S.C. 551◄.

(b) "Detail" means the temporary assignment of an employee from one position to another position without change in [his] civil service or pay status. The assignment to an administrative law judge of a case of the level of difficulty that would ordinarily be assigned to an administrative law judge of a different grade does not of itself constitute a detail within the meaning of this subpart.

(c) "Administrative law judge position[s]" means a position in which any portion of the duties includes those which require the appointment of an administrative law judge under [section 3105 of title 5, United States Code] ►5 U.S.C. 3105◄.

(d) "Promotion" means a change in grade from one position to a higher graded position, whether newly created[,] or left vacant because of promotion, demotion, transfer,

reassignment, retirement, separation of the last incumbent, or [a change resulting from the assignment of work of higher grade than the work] ►reclassification to a higher grade◄ of the position to which the administrative law judge was absolutely appointed.

(e) "Reinstatement" means reemployment authorized on the basis of the appointee's absolute status as administrative law judge after ►an earlier◄ separation from an administrative law judge position.

(f) "Removal" means [an involuntary change in the status] ►discharge◄ of an administrative law judge[, including discharge, suspension, reduction in grade, reduction in pay, and a furlough of 30 days or less] from the position of administrative law judge [and demotion,] ►or involuntary◄ reassignment, ►demotion, or◄ [and] promotion to a position other than that of administrative law judge.

[(5 U.S.C. 7701, et seq.)]

930.203 [Appointment.] ►Examination under OPM Examination Announcement No. 318.◄

(a) [Eligible rating. An applicant for an administrative law judge position who meets the minimum requirements for entrance to the examination and attains a numerical rating determined by OPM as sufficient to produce an adequate register is eligible for appointment.] ►*Periodic open competition.* Applicants for entrance into the competitive service as administrative law judges will be examined periodically in open competition as announced by OPM. Applications received by OPM during such periods of open competition will be reviewed as a group. Applicants in each group become eligible for consideration in the preparation of certificates of final eligibles when OPM has an adequate opportunity to determine basic ratings for all applicants and to determine final ratings for as many applicants as OPM determines is sufficient to produce an adequate register of final eligibles for appointment.◄

►(b) *Basic rating.* All applicants will initially be considered for a basic rating. To receive a basic rating, applicants must—

►(1) Demonstrate in their written applications and supporting materials that they meet the qualifying experience requirements in OPM Examination Announcement No. 318; and

►(2) Receive a minimum score on the supplemental qualifications statement described in the examination announcement.◄

►(c) *Final rating.* Applicants who are assigned a basic rating become eligible to compete for a final rating through participating in three additional examining procedures described in the examination announcement:

►(1) A written demonstration;

►(2) A panel interview; and

►(3) A personal reference inquiry.◄

►(d) As many of the applicants with the highest basic ratings, augmented by veterans preference if applicable, as needed to meet anticipated agency hiring needs in various geographic areas will be invited to participate. Applicants who complete the examination will be assigned a final numerical rating based on a weighted sum of the scores for each of the four parts, transmuted to a scale of 0 to 100, with 70 required to pass. For applicants entitled thereto, the final passing score will be augmented by 5 or 10 veteran preference points.◄

►(e) *Preparation of certificates.* As agencies request certificates of applicants from registers to consider in filling vacant administrative law judge positions in various geographic areas, all applicants who are eligible and available for those positions will be ranked to identify the best qualified applicants to be certified. Eligible applicants who have not completed the final rating process will be ranked on the basis of projected maximum ratings, augmented by veteran preference points if applicable. Eligible applicants who have completed the final rating process will be ranked on the basis of assigned final ratings, augmented by veterans preference points if applicable. For a given vacancy, only those applicants who have completed the final rating process and achieved a final examination rating which is higher than the projected maximum rating that applicants not fully examined can be expected to achieve, will be certified to the requesting agency. At least three eligible applicants will be certified to the employing agency for consideration for each vacancy.◄

►(f) *Ineligible rating.* [An applicant] ►Applicants◄ who obtain[s] an ineligible rating or [an applicant] ►applicants◄ who [is] ►are◄ dissatisfied with [his or her] ►their◄ final rating►s◄ may appeal the rating to the Administrative Law Judge Rating Appeals Panel, Office of Personnel Management, Washington, DC 20415, within 30 days from the date of final action by the Office of Administrative Law Judges, or such later time as may be allowed by the Panel.

§ 930.203a [Title of Administrative Law Judge.] ►Appointment.◄

Note.—Paragraphs (b) through (f) below are from the former § 930.203.

[(b)] ►(a)◄ *Prior approval.* An agency may make an appointment to an administrative law judge position only with the prior approval of OPM, except when it makes its selection from a certificate of eligibles furnished by OPM. ►When requesting OPM approval of an appointment to an administrative law judge position or the issuance of a certificate of eligibles, the requesting agency must demonstrate that its hearing work load requires the appointment of an additional administrative law judge(s) to get necessary work done.◄ An appointment is subject to investigation in accordance with §§ 731.201 through 731.303 of this chapter and subject to security clearance by the agency.

[(c)] ►(b)◄ *Probationary and career-conditional periods.* The requirement of a probationary and career-conditional period before absolute appointment does not apply to an appointment to an administrative law judge position.

[(d)] ►(c)◄ *Appointment of incumbents of newly classified administrative law judge positions.* An agency may appoint as an administrative law judge an employee who is serving in a position which is classified as an administrative law judge position on the basis of legislation, Executive order, or decision of a court, if[:] ►—◄

(1) [He] ►The employee◄ has a competitive status or was serving in an excepted position under a permanent appointment;

(2) [He] ►The employee◄ was serving in the position on the date of the legislation, Executive order, or decision of the court, on which the classification of the position is based;

(3) OPM receives a recommendation for [his] ►the employee's◄ appointment from the agency concerned not later than 6 months after classification of the position on the basis of the legislation, Executive order, or decision of the court; and

(4) OPM approves [his] ►the employee's◄ qualifications for the position ►as provided in OPM Examination Announcement No. 318◄. In an emergency situation, when the needs of the service require it, OPM may authorize the conditional appointment of an employee to an administrative law judge position pending final decision on [his] ►the employee's◄ eligibility for absolute appointment under this paragraph.

[(e)] ►(d)◄ *Appointment of legislative and judicial employees.* An agency may appoint a former employee of the legislative or judicial branch to an

administrative law judge position if [he] ►the employee◄ passes such suitable noncompetitive examination as OPM prescribes and is otherwise eligible under the provisions of [section 3304(c) of title 5, United States Code] ►5 U.S.C. 3304(c)◄.

[(f)] ►(e)◄ *Appointment of incumbents of nonadministrative law judge positions.* Except as provided in paragraphs (c) and (d) of this section, an agency may not appoint an employee who is serving in a position other than an administrative law judge position to an administrative law judge position, [except] ►other than◄ by selection from a certificate of eligibles furnished by OPM from the open competitive register.

►§ 930.203b◄ ►Title of administrative law judge.◄

Note.—The paragraph below is the former § 930.203a.

The title "administrative law judge" is the official class title for an administrative law judge position. Each agency [shall] ►will◄ use only this official class title for personnel, budget, and fiscal [and all other] purposes[, and may not use the word "judge" as the title or part of the title for any other position for any purpose].

§ 930.204 Promotion.

(a) When [the Office of Personnel Management] ►OPM◄ classifies an occupied administrative law judge position at a higher grade ►on the basis of the position's substantive and technical nature◄, [the Office of Personnel Management] ►OPM◄ [shall] ►will◄ direct the promotion of the incumbent administrative law judge [and the]►. The◄ promotion [is] ►will be◄ effective on the date named by [the Office of Personnel Management] ►OPM◄. [This regulation pertains only to appointments to positions which because of their substantive and technical nature warrant a grade GS–16; the regulation does not pertain to positions which because of their managerial and administrative nature warrant a grade GS–16.]

►(b) When OPM classifies one of an agency's administrative law judge positions at a higher grade on the basis of the position's managerial and administrative nature, an agency may promote one of its administrative law judges to such a position, provided the promotion is in accordance with regular civil service procedures.◄

[(b)] ►(c)◄ No more than twice during a calendar year, an agency may notify [the Office of Personnel Management] ►OPM◄ that it wishes to fill a specific numbers of its ►higher◄ grade [GS–16 ALJ] ►administrative law judge◄ vacancies from among its [grade GS–15 ALJs] ►administrative law judges at the next lower grade◄ who [are on the GS–16 register] ►meet all current qualification requirements for appointment at the higher grade as provided in OPM Examination Announcement No. 318◄ and who have served as ►administrative law◄ judges at the agency for at least 1 year. [The Office of Personnel Management] ►OPM◄ [shall] ►will◄ select from the ►next lower◄ grade [GS–15 ALJs] ►administrative law judges◄ of that agency those [ALJs] ►administrative law judges◄ who it determines are best qualified for appointment to ►the higher grade◄ [a grade GS–16 ALJ] ►administrative law judge◄ positions and [shall] ►will◄ direct their appointment by the agency to such ►higher grade◄ [grade GS–16 ALJ] ►administrative law judge◄ positions.

§ 930.205 Reassignment.

An agency may reassign an administrative law judge who is serving under absolute appointment from one administrative law judge position to another administrative law judge position ►at the same grade in the same agency,◄ with the prior approval of OPM on a noncompetitive basis ►, provided the assignment is for bona fide management reasons and◄ in accordance with regular civil service procedures ►and merit system principles◄.

§ 930.206 Transfer.

(a) [With the prior approval of OPM, a] ►A◄n agency may transfer an administrative law judge ►from another agency,◄ with a promotion, [only after he] ►with the prior approval of OPM, provided the administrative law judge meets◄ [has established his eligibility at the higher grade in accordance with] all current [examination] ►qualification◄ requirements ►for appointment at the higher grade as provided in OPM Examination Announcement No. 318◄.

(b) An agency may transfer an administrative law judge from [one administrative law judge position in] another agency [to another administrative law judge positions]►,◄ when this does not involve a promotion, with the prior approval of OPM on a noncompetitive basis in accordance with regular civil service procedures►, provided the administrative law judge meets all current qualification requirements for appointment as an administrative law judge as provided in OPM Examination Announcement No. 318◄.

(c) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) or (b) of this section sooner than [one] ►1◄ year after the person's last non-temporary competitive appointment.

§ 930.207 Reinstatement.

[(a) Except as provided in paragraph (b) of this section,] An agency may reinstate [a person] ►people◄ who [has] ►have◄ served with absolute status as [an] administrative law judge►s◄ under [Section 3105 of title 5, United States Code] ►5 U.S.C. 3105◄, only after[: (1) He/she has] ►they have◄ established [his/her] ►their◄ eligibility at the grade to which [he/she is] ►they are◄ to be reinstated, in accordance with ►all current qualification◄ requirements of [Office of Personnel Management] ►OPM Examination◄ Announcement No. 318[, or any revision or successor thereto, and (2) He/she demonstrates that his/her experience satisfies all current qualifications requirements]. Reinstatement is subject to investigation by, and the prior approval of, [the Office of Personnel Management] ►OPM◄.

[(b) Any person who is or has been appointed directly from an administrative law judge position to the position of Director, Office of Administrative Law Judges, may at any time be reinstated to an administrative law judge position without regard to requirements set out in paragraph (a) of this section.]

§ 930.208 Restoration.

Parts 352 and 353 of this chapter governing reemployment rights and restoration ►to duty◄ after military service ►or recovery from compensable injury,◄ also apply to reemployment and restoration to administrative law judge positions.

§ 930.209 Detail and assignment to other duties.

(a) An agency may not detail an employee who is not an administrative law judge to an administrative law judge position.

(b) An agency may assign an administrative law judge (by detail or otherwise) to perform duties that are not duties of an administrative law judge without [the] prior approval of OPM only when[:] ►—◄

(1) The other duties are not inconsistent with the duties and

responsibilities of an administrative law judge;

(2) The assignment is to last no longer than 120 days; and

(3) The administrative law judge has not had an aggregate of more than 120 days of those assignments within the preceding 12 months.

(c) On a showing by an agency that it is in the public interest to do so, OPM may authorize a waiver of paragraphs (b)(2) and (3) of this section.

►(d) An agency may detail an administrative law judge from one administrative law judge position to another, in the same agency, without the prior approval of OPM, provided the detail is in accordance with regular civil service procedures.◄

§ 930.210 Pay.

(a) OPM [shall] ►will◄ classify administrative law judge positions in accordance with the regulations and procedures adopted by OPM for classifications under [chapter 51 of title 5, United States Code] ►5 U.S.C. Chapter 51◄. OPM [shall] ►will◄ make these classifications independently of agency recommendations and ratings.

(b) An administrative law judge is entitled to within-grade increases in accordance with Part 531 of this chapter, except that the requirement that [his] the work be [of] ►at◄ an acceptable level of competence as determined by the head of [his] the agency does not apply.

(c) An agency [shall] ►may◄ not grant a quality increase under [section 5336(a) of title 5, U.S.C.] ►5 U.S.C. 5336(a)◄, or a monetary or honorary award under [section 4503 of title 5, U.S.C.] ►5 U.S.C. 4503◄, for superior accomplishment by an administrative law judge in the performance of adjudicatory functions.

(d) Upon appointment, an administrative law judge [shall] ►will◄ be paid at the minimum rate of the grade approved by OPM►,◄ unless ►in accordance with Subpart B of Part 531 of this chapter,◄ [he] ►the administrative law judge◄ is eligible for a higher rate because of prior service ►or superior qualifications, as follows:◄

►(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate, without obtaining the prior approval of OPM, if it determines that the administrative law judge applicant is entitled to such higher rate.◄

►(2) An agency may offer an administrative law judge applicant with superior qualifications a higher than minimum rate, only if it first obtains approval from OPM to offer such a higher rate to an applicant who is within reach on a certificate of eligible administrative law judge applicants, and whose existing pay or earning power exceeds the minimum rate. "Superior qualifications" for applicants includes having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field. OPM will approve such payment of a higher than minimum rate for superior qualifications only when it is clearly necessary to meet the needs of the Government.◄

§ 930.211 Performance rating.

An agency shall not rate the performance of an administrative law judge.

§ 930.212 Rotation of ►administrative law◄ judges.

Insofar as practicable, an agency shall assign its administrative law judges in rotation to cases.

§ 930.213 Use of ►administrative law◄ judges [of] ►on detail from◄ other agencies.

►(a) [At the request of a] ►A◄n agency that is occasionally or temporarily insufficiently staffed ►with administrative law judges◄ [, OPM shall] ►may ask OPM to◄ provide for the temporary use by the agency of the services of an administrative law judge of another agency. ►The agency request should—◄

►(1) Identify and describe briefly the nature of the case(s) to be heard (including parties and representatives when available), and◄

►(2) Specify the legal authority under which the use of an administrrative law judge is required.◄

►(b)◄ OPM, with the consent of the agency in which an administrative law judge is employed, [shall] ►will◄ select the administrative law judge to be use, and [shall] ►will◄ name the date on which the administrative law judge is to be made available ►for detail◄ to the agency in need of his or her services.

►(c) Such details generally will be reimbursable by the agency requesting the detail.◄

§ 930.214 [Separation.] ►Actions against administrative law judges.◄

(a) [*Removal.*] ►*Procedures.*◄ An agency may remove, ►suspend, reduce in grade, reduce in pay, or furlough for 30 days or less,◄ an administrative law judge only for good cause, established and determined by the Merit Systems Protection Board on the record and after opportunity for ►a◄ hearing before the Board as provided in ►5 U.S.C. 7521 and◄ §§ 1201.131 through 1201.136 of this title. ►Procedures for adverse actions by agencies under Part 752 of this chapter are not applicable to actions against administrative law judges.◄

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances by reason of which the retention of an administrative law judge in his [/] ►or◄ her position, pending adjudication of the existence of good cause for his [/] ►or◄ her removal, would be detrimental to the interests of the Government, the agency [shall] ►will◄ either (1) assign the administrative law judge to duties in which these conditions would not exist[,]►;◄ or (2) place him[/] ►or◄ her on annual leave for the period that will be covered by the annual leave to his[/] ►or◄ her credit. An agency may take action under this paragraph only with [the] prior approval of the Board.

(c) *Exceptions from procedures.* The procedures in this subpart governing the removal ►, suspension, reduction in grade, reduction in pay, or furlough of 30 days or less◄ of administrative law judges do not apply in making dismissals ►or taking other actions◄ requested by OPM under § 5.2 and § [5.4]►5.3◄ of this chapter[,]►;◄ nor to dismissals ►or other actions◄ made by agencies in the interest of national security ►under 5 U.S.C. 7532; nor to reduction-in-force action taken by agencies under 5 U.S.C. 3502; nor any action initiated by the Special Counsel of the Merit Systems Protection Board under 5 U.S.C. 1206◄

[(5 U.S.C. 7701, et seq.)].

§ 930.215 Reduction in force.

[(a) *Service date.* The service date for the purpose of reductions in force of administrative law judges reflects the length of Federal Government service.]

►(a) *Retention preference regulations.* Except as modified by this section, the reduction-in-force regulations in Part 351 of this chapter apply to reductions in force of administrative law judges.◄

(b) *Determination of ßtenure groupsα retention standing.* In determining retention standing in a reduction in force, each agency [shall] ►will◄ classify its administrative law judges in groups and subgroups according to tenure of employment►,◄ [and] veteran preference►, and service date◄ in the manner prescribed in Part 351 of this chapter. However, as administrative law judges are not given performance ratings, the provisions in Part 351 of this

chapter referring to the effect of performance ratings on retention standing are not applicable to administrative law judges.

(c) [*Status of administrative law judges who are reached in reduction in force.α δPlacement Assistance.* (1) Administrative law judges who are reached by an agency reduction in force and who are notified they are to be separated are eligible for placement assistance under—◄

►(i) Agency reemployment priority lists established and maintained by agencies under Subpart J of Part 351 of this chapter for all agency tenure group I, career employees displaced in a reduction in force;◄

►(ii) Agency and OPM priority placement programs under Subpart C of Part 330 of this chapter for all agency tenure group I, career employees displaced in a reduction in force.◄

[(1)] ►(2)◄ [OPM, on] ►On◄ request of [an] administrative law judge►s◄ who [has been] ►are reached by an agency in reduction in force and who are◄ notified [he is] ►they are◄ to be separated, furloughed ►for more than 30 days◄, or demoted [because of a reduction in force], ►OPM◄ [shall] ►will◄ place [his] ►their◄ name►s◄ on[: (i)] OPM's priority referral list ►for administrative law judges displaced in a reduction in force◄ for the grade in which [he] ►they◄ last served and for all lower grades[; and (ii) The open competitive administrative law judge register, ahead of all other eligibles, for the grade from which he was separated, furloughed, or demoted as an administrative law judge and for all lower grades. When more than one administrative law judge is affected, OPM shall rate the qualifications of the several judges and relative standing at the top of the register is based on these ratings].

[(2)] ►(3)◄ An administrative law judge may file a request under paragraph (c)[(1)]►(2)◄of this section, ►for placement on the OPM priority referral list,◄ at any time after the receipt of the ►specific◄ reduction-in-force notice, but not later than 90 days after the date of separation, furlough ►for more than 30 days◄, or demotion. [He shall file with his request a Standard Form 171 and a copy of the reduction-in-force notice.] ►Placement assistance through the OPM priority referral list continues for 2 years from either the effective date of the reduction-in-force action, or the date assistance is requested if a timely request is made. Eligibiity of the displaced administrative law judge for the OPM priority referral list is terminated earlier upon the administrative law judge's written request; acceptance of a non-temporary, full-time administrative law judge position; or declination of more than one offer of full-time career employment as an administrative law judge at or above the grade level held when reached for reduction in force at geographic locations previously indicated as acceptable.◄

►(4) The displaced administrative law judge will file with the request for priority referral by OPM a Standard Form 171, Application for Federal Employment, and a copy of the reduction-in-force notice. Also, the displaced administrative law judge may ask OPM to limit consideration for vacant positions at any grade level for which qualified to specific geographic areas.◄

[(3)] ►(5)◄ When there is no admninistrative law judge on the agency's reemployment priority list, but there is an administrative law judge who has been placed on the ►OPM◄ priority referral list (paragraph (c) [(1)] ►(2)◄ of this section) [or on top of the open competitive register for priority certification (paragraph (c)(1)(ii) of this section)], the agency may fill a vacant administrative law judge position only by selection from the ►OPM◄ priority referral list [or, the register], unless it obtains the prior approval of OPM ►for filling the vacant position◄ under ►§ 930.203a(a),(c),(d) and (e);► [§ 930.203(b),] § 930.204[,] ►;◄ or § 930.207► of this subpart. OPM will grant such approval only under the extraordinary circumstance that the candidate(s) not on the OPM priority referral list possesses experience and qualifications superior to the displaced administrative law judge(s) on the list◄.

[4] ►(6)◄ Referral, certification, and selection of administrative law judges from [the agency's reemployment priority list,] OPM's priority referral list[, or the open competitive register] are made without regard to selective certification ►or special qualification◄ procedures applied in the original appointment ►in accordance with OPM Examination Announcement No. 318◄.

[(d) Retention preference regulations. The reduction-in-force regulations for use in a reduction in force (Part 351 of this chapter), except as modified by this section, apply to reductions in force of administrative law judges.]

§ 930.216 Temporary [R]►r◄eemployment: [S]►s◄enior [A]►a◄dministrative [L]►l◄aw [J]►j◄udges.

[(a) Subject to the requirements and limitations of this section, an annuitant, as defined by section 8331 of title 5, United States Code, receiving an annuity from the Civil Service Retirement and Disability Fund (1) who has served with absolute status as an administrative law judge under section 3105 of that title; and (2) who has met current qualification and examination requirements set forth in OPM Examination Announcement No. 318 (including the requirement to maintain a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution), may be temporarily reemployed as an administrative law judge by an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with sections 556 and 557 of that title. Such retired administrative law judges who are so reemployed will be known as senior administrative law judges.]

►(a)(1) Subject to the requirements and limitations of this section, the following annuitants, as defined by 5 U.S.C. 8331, who are receiving an annuity from the Civil Service Retirement and Disability Fund may be temporarily reemployed as administrative law judges by an agency that has temporary, irregular workload requirements for conducting proceedings in accordance with 5 U.S.C. 556 and 557:

►(i) Annuitants who have served with absolute status as administrative law judges under 5 U.S.C. 3105; and

►(ii) Annuitants who have met current qualification requirements set forth in OPM Examination Announcement 318 (including the requirement to maintain a current license to practice law under the laws of a state, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution).

►(2) These retired administrative law judges who are so reemployed will be known as senior administrative law judges.◄

(b) Retired administrative law judges who meet the requirements of paragraph (a) of this section and who are available for temporary reemployment must notify OPM in writing of their availability, giving their full name, address, telephone number, name of the agencies where [the person] ►they◄ served as [an ALJ] ►administrative law judges◄, and jurisdictions in which they are currently licensed to practice law. OPM will maintain a master list of such retired adminstrative law judges for use in responding to agency requests for such ►administrative law◄ judges.

(c) An agency that wishes to temporarily reemploy administrative

law judges must submit a written request to OPM. The request [shall] ►will◄—

(1) Identify the statutory authority under which the administrative law judge is expected to conduct proceedings;

(2) Demonstrate that the agency is occasionally or temporarily understaffed;

(3) Specify the tour of duty, location, period of time, or particular case(s), for the requested reemployment; and

(4) Describe any special qualifications desired in the retired administrative law judge that it wishes to reemploy, such as experience in a particular field, agency, or substantive area of law.

(d) OPM will approve agency requests for temporary reemployment of retired administrative law judges for a specified period or periods provided [:]►—◄

(1) The requesting agency fully justifies [that it requires the use of] ►the need for◄ an administrative law judge [and] ►for formal proceedings and demonstrates◄ that it is occasionally or temporarily understaffed; and

(2) No other administrative law judge with the appropriate qualifications is available through OPM under § 930.213 of this subpart to perform the occasional or temporary work for which reemployment is requested.

(e) Upon approval of an agency request to reemploy a retired administrative law judge, OPM will select from its master list of retired administrative law judges, in rotation to the extent practicable, those retired judges who it determines meet agency requirements. OPM will then provide a list of such individuals to the requesting agency and the agency must then select from that list a retired administrative law judge for reemployment.

(f) Reemployment of retired administrative law judges is subject to investigation of suitability in accordance with §§ 731.201 through 731.303 of this chapter. It is also subject to conflict of interest and security investigation requirements by the appointing agency.

(g) Reemployment as senior administrative law judges will be for either a specified period not to exceed 1 year or such periods as may be necessary for the reemployed administrative law judge to conduct and complete the hearing of one or more specified cases and issue decisions therein. Upon agency request, OPM may either reduce or extend such period of reemployment, as necessary, to coincide with changing staffing requirements.

(h) An agency may assign its senior administrative law judges to either (1) hear one or more specific cases; or (2) hear, in normal rotation to the extent practicable, a number of cases on its docket and issue decisions therein.

(i) Hours of duty, administrative support services, and travel reimbursement for senior administrative law judges will be determined by the employing agency in accordance with the same rules and procedures that are generally applicable to employees.

(j) A senior administrative law judge serves subject to the same limitations on performance appraisal and ►reduction in pay or◄ removal as any other administrative law judge employed under this subpart and [section 3105 of title 5, United States Code] ►5 U.S.C. 3105◄. An agency will not rate the performance of a senior administrative law judge. ►Reduction-in-pay or removal◄ [A] ►a◄ctions may not be taken against senior administrative law judges during the period of reemployment, except for good cause established and determined by the Merit Systems Protection Board after opportunity for a hearing on the record before the Board as provided in ►5 U.S.C. 7521 and◄ §§ 1201.131 through 1201.136 of this [T]►t◄itle.

(k) A senior administrative law judge will be paid by the employing agency the current rate of pay for the grade at which the duties to be performed have been classified and at a step of that grade that is nearest (when rounded up) to the highest previous grade and step attained as an administrative law judge before retirement. However, an amount equal to the annuity allocatable to the period of actual employment will be deducted from his or her pay and deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Protection of Employees Who Provide Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a proposed rule which would have required Part 50 licensees and applicants to include in procurement contracts a clause requiring contractors and subcontractors to post Form NRC-3 dealing with employee protection. The Commission is pursuing the matter by seeking voluntary cooperation from licensees in urging that Form NRC-3 be posted by contractors and by continuing cooperative efforts with the Department of Labor.

FOR FURTHER INFORMATION CONTACT: Anthony J. DiPalo, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 443-7605.

SUPPLEMENTARY INFORMATION: On July 6, 1983, the Commission published in the **Federal Register** a proposed rule which would have required Part 50 licensees and applicants to insert procurement contracts a clause requiring contractors (and in turn subcontractors) to post on their premises Form NRC-3 regarding employee protection (48 FR 31050). The proposed rule was part of a continuing Commission effort to implement section 210 of the Energy Reorganization Act, which protects employees of Commission licensees and applicants or their contractors and subcontractors from discrimination based upon employee participation in Commission proceedings. Further general background is provided in the notice of proposed rulemaking and in a prior Commission notice on employee protection (47 FR 30453, July 14, 1982).

The Commission received 15 public comments on the proposed rule, mostly from industry or industry representatives. While a few commenters requested only clarifying changes, most others strongly opposed the proposed rule approach of procurement contract modification. Among the arguments offered against the proposed rule were the following:

1. The rule is an additional administrative burden on contractors.

2. Monitoring and enforcement would be difficult and costly.

3. Licensees would be unable to purchase from contractors not agreeing to the contract term.

4. Licensees have no direct control over contractor/subcontractor relations.

5. The requirement is unnecessary because nuclear contracts already contain a provision requiring the parties to observe all applicable laws and regulations including those on employee protection.

6. The posting requirement should be imposed directly on contractors and subcontractors, rather than by interference with contractual matters. The strength of the requirement is reduced significantly by imposing it via third parties (i.e., licensees).

7. The contractor would receive nothing in return for observing the posting requirement. Hence the licensee has no bargaining position in this regard.

8. The rule is unnecessary because most discrimination claims (90%) are filed by 10 CFR Part 50 licensee employees and employees of their contractors and subcontractors. These employees are therefore already aware of their rights.

9. Given the complexities of contracting in the nuclear industry, it would be difficult for licensees to determine which contracts are covered by the requirement (e.g., unwritten "modifications" to procurement agreements, purchases from existing stock of distributors, etc.).

The Commission does not necessarily agree with all of the above arguments. However, taken as a whole the comments filed by industry representatives do indicate that the proposed rule may not be the preferred alternative. While the straight forward approach i.e., imposition of the position requirement directly on contractors and subcontractors by rule, has the appeal that it does not depend upon third parties (licensees) for enforcement, the Commission's authority under section 210 of the Energy Reorganization Act is not sufficient to support such a rule. In this area the Commission's direct enforcement powers clearly end with the licensee or applicant.

The Commission could enforce the "posting clause" requirement on its licensees by a program of reviewing procurement contracts. Ensuring that the clause was inserted in subcontracts would be more difficult because the licensee would not be a party to the contract. The fundamental problem, however, is that neither the licensee nor the NRC are in a position to confirm that the clauses are being carried out, and if not, to require conformance. As stated, NRC does not have jurisdiction over nonlicensees. The licensee's ability to correct noncompliances, however discoverd, rests on contract rights. The ability to gain "specific performance" of a contract term as a judicial remedy is limited by contract law doctrines which generally favor the granting of monetary damages for breaches of contract. If the "posting clause" contained a built-in penalty clause, e.g., forfeiture of a significant portion of the contract price, the remedy issue might be solved but contractor resistance might be encountered in the bargaining process. Such penalty clauses would have to be tailored to individual contracts, and would also have to be inserted in subcontracts. The Commission is reluctant to delve this deeply into contractual relations, and in any event would have to do so by proposed rulemaking after careful study of the legal and financial consequences of requiring penalty clauses for failure to observe the posting requirement.

The procurement contract method suggested in the proposed rule places the licensee in the position of having to police its contractors, and their contractors, with regard to matters not directly related to contract performance. Moreover, enforcement of the ultimate purpose of the rule, which is not the posting clause itself but the actual posting of the form, rests upon contract remedies which can only be exercised by the licensee. (In the case of subcontractors, even the licensee would be without a right of action). The Commission believes that its resources, and those of the licensee, would be better directed toward confirming that the products and services received from contractors and subcontractors meet applicable requirements rather than dissipated in an effort to ensure that a form is posted on contractor premises.

The Commission continues to believe that all possible measures should be taken to ensure that employees of licensees, applicants, contractors, and subcontractors are adequately informed of their rights so that the Commission's access to safety information is unrestricted by threats of employment discrimination. On balance, however, the Commission has concluded that the method of the proposed rule would not best serve this objective. The Commission is therefore withdrawing the proposed rule.

Dated at Washington, DC, this 17th day of March 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 87-6132 Filed 3-19-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-87-4]

Petitions for Rulemaking; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before May 19, 1987.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. 25163, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the rules docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 16, 1987.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the Petition
25163	Regional Airline Association.	Description of the Petition: Petitioner, on behalf of its members, seeks amendment of § 21.183(d) or adoption of a new regulatory provision which would permit the importation of used parts, components, or appliances pursuant to certificates of airworthiness required by § 121.183(d) for the issuance of certificates of airworthiness for the importation of used aircraft. Regulations Affected: 14 CFR § 21.183(d) Petitioner's Reason for Rule: Petitioner states that relief is needed because so much of its equipment is foreign manufactured, and parts, components, or appliances therefor frequently must be obtained abroad. Petitioner states its members are heavily dependent upon the use of foreign aircraft because of the dearth of U.S.-manufactured aircraft in the size range from 19 seats to 100 seats.

[FR Doc. 5998 Filed 3-19-87; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-08-AD]

Airworthiness Directives; SAAB-Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to certain SAAB Model SF-340A airplanes, that would require modification to the wiring and connectors associated with the explosive bolts in the main landing gear emergency extension system. This action is prompted by an incident that resulted in the degradation of the emergency extension system. This condition, if not corrected, could result in a gear-up landing and severe damage to the airplane if the primary extension system failed.

DATE: Comments must be received no later than May 11, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-08-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB, Aircraft Product Support AB, S. 58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-08-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: Service history has shown that the electrical wiring and connectors in the main landing gear emergency extension system on the SAAB Model SF-340 airplanes are subject to deterioration and failures due to exposure to the elements. Investigation of a reported incident concluded that correct operation of the main landing gear (MLG) emergency extension system was jeopardized by deficiencies of wiring and connectors. The emergency extension system for the main landing gear consists, in part, of explosive bolts on the main landing gear doors. These bolts are fired electrically to open the doors and allow the gear the lower into the down and locked position. Failure of the system to function, when required because of a failure of normal main landing gear extension system, would force the pilot to make a gear-up landing and could result in extensive damage to the airplane.

SAAB-Scania issued Service Bulletin SF340-32-028, Revision 1, dated November 25, 1986, which describes modification of the wiring and connectors in the emergency landing gear extension systems.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification in accordance with the service bulletin previously mentioned.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Adminstration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Fairchild: Applies to Model SF–340 airplanes having manufacturer's serial numbers SF40A–003 through –078 inclusive, certified in any category. To ensure reliability of the emergency main landing gear extension system, accomplish the following within 90 days after the effective date of this AD, unless previously accomplished:

1. Modify the wiring and connectors of the main landing gear emergency extension system in accordance with the instructions contained in SAAB Service Bullentin SF340–32–028, Revision 1, dated November 25, 1986.

2. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to SAAB, Aircraft Product Support AB, S–58188, Linkoping, Sweden.

This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 12, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–5992 Filed 3–19–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86–AWP–18]

Proposed Alteration of VOR Federal Airway and Jet Routes; Nevada

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airway V–32 and Jet Routes J–32 and J–94 located in the vicinity of Lovelock, NV. The Lovelock very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) will be relocated and this action would alter the descriptions of all airways and jet routes affected by this relocation.

DATE: Comments must be received on or before April 20, 1987.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWP–18, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWP–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Since the Lovelock VORTAC, at its current location, will be decommissioned on or before June 4, 1987, it becomes imperative that the comment period for this action be limited to 30 days. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign VOR Federal Airway V–32 and Jet Routes J–32 and J–94 located in the vicinity of Lovelock, NV. The Lovelock VORTAC will be moved approximately 5 miles north of its current location to lat. 40°07′35″N., long. 118°34′35″W. Also, the centerline of J–32 and J–94 would be realigned to the north to provide additional separation from the Gabbs North MOA. This action would increase safety. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic

procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–32 [Amended]

By removing the words "INT Lovelock 053° and Battle Mountain, NV, 264° radials" and substituting the words "INT Lovelock 057°T(041°M) and Battle Mountain, NV, 264°T(248°M) radials"

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J–32 [Amended]

After "Mustang, NV;" insert "Lovelock, NV;"

J–94 [Amended]

After "Mustang, NV;" insert "Lovelock, NV;"

Issued in Washington, DC, on March 12, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–5996 Filed 3–19–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 71 and 75

[Airspace Docket No. 86–ASO–24]

Proposed Alteration of VOR Federal Airways, Compulsory Reporting Points, and Jet Routes, Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter 9 Federal airways, 6 jet routes and associated compulsory reporting points in the vicinity of Augusta, GA. This action is being taken in anticipation of the relocation of a navigational aid with which these airways and jet routes are aligned. The relocation site is approximately 12 nautical miles north of Augusta.

DATE: Comments must be received on or before May 4, 1987.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86–ASO–24, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9249.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addresed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ASO–24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter VOR Federal Airways V–18, V–56, V–155, V–179, V–185, V–311, V–323, V–417 and V–454 and Jet Routes J–4, J–14, J–52, J–53, J–85 and J–99 and associated compulsory reporting points. Portions of all of these jet routes and airways are currently aligned with the Augusta, GA, VORTAC which is planned for relocation. When the relocation is completed, this VORTAC will have been moved northward approximately 10 miles and renamed "Colliers" VORTAC. Additionally, Colliers VORTAC would become a compulsory reporting point on the affected airways and routes. Sections 71.123, 71.203, 71.207 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical

regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation Safety, VOR Federal Airways, Compulsory Reporting Points, Jet Routes

The Proposed Amendments

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V–18 [Amended]

By removing the words "INT Atlanta 089° and Augusta, GA, 278° radials; Augusta, INT Augusta 103° and Charleston, SC 296° radials; Charleston," and by substituting the words "Colliers, SC; Charleston, SC,"

V–56 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

V–155 [Amended]

By removing the words "via Augusta, GA;" and by substituting the words "INT Columbus 068°T(067°M) and Colliers, SC, 243°T(247°M) radials; Colliers;"

V–179 [Amended]

By removing the words "Augusta, GA 263° radials" and by substituting the words "Athens, GA, 221°T(221°M) radials"

V–185 [Amended]

By remvoing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

V–311 [Amended]

By removing "153°" and by substituting "154°T(156°M)" and also by removing "296°" and by substituting "295°T(300°M)"

V–323 [Amended]

By removing the words "Augusta, GA, 263° radials" and by substituting the words "Athens, GA 221°T(221°M) radials"

V–417 [Amended]

By removing the words "Athens; INT Athens 109° and Augusta, GA, 294° radials; Augusta; INT Augusta 148° and Allendale, SC, 273° radials; Allendale;" and by substituting the words "Athens; Colliers, SC; INT Colliers 150°T(154°M) and Allendale, SC, 273°T(274°M) radials; Allendale;"

V–454 [Amended]

By removing "240°" and by substituting "241°T(242°M)"

3. Section 71.203 is amended as follows:

Augusta, GA [Remove]
Colliers, GA [New]

4. Section 71.207 is amended as follows:

Augusta, GA [Remove]
Colliers, GA [New]

PART 75—[AMENDED]

5. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

6. Section 75.100 is amended as follows:

J–4 [Amended]

By removing the words "INT Montgomery 051° and Augusta, GA, 273° radials; Augusta;" and by substituting the words "INT Montgomery 051°T(048°M) and Colliers, SC, 268°T(272°M) radials; Colliers;"

J–14 [Amended]

By removing the words "INT Atlanta, GA, 092° and Spartanburg, SC, 234° radials;" and by substituting the words "INT Atlanta 087°T(087°M) and Spartanburg, SC, 234°T(236°M) radials;"

J–52 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

J–53 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

J–85 [Amended]

By removing the words "Augusta, GA;" and by substituting the words "Colliers, SC;"

J–99 [Revised]

From Colliers, SC, via Knoxville, TN; to Louisville, KY.

Issued in Washington, DC, on March 12, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–5993 Filed 3–19–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 75

[Airspace Docket No. 86–AWP–41]

Proposed Alteration of Jet Routes, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Jet Routes J–1 and J–7 located in the vicinity of Fillmore, CA. The proposed alignments are necessary to improve the traffic flow into Los Angeles International Airport to enhance the current profile descent to Runways 24/25. This action would decrease en route and terminal delays, decrease controller workload and simplify overall air traffic control operations in that sector.

DATE: Comments must be received on or before May 4, 1987.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWP–41, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-

Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-41." The postcard will be data/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Routes J-1 and J-7 which are located in the vicinity of Fillmore, CA. The Fillmore VORTAC will be approved as a high altitude navigational aid and we propose to add Fillmore to the descriptions of J-1 and J-7. This action would enhance air traffic operations in that area. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—[AMENDED]

1. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-1 [Amended]

By removing the words "INT of the Los Angeles 319° and the Avenal, CA, 145° radials; Avenal;" and by substituting the words "Fillmore, CA; Avenal, CA;"

J-7 [Amended]

By removing the words "via INT Los Angeles 319° and Avenal, CA, 145° radials; INT Avenal 145°" and by substituting the words "via Fillmore, CA; INT Fillmore 325°T(310°M)"

Issued in Washington, DC, on March 12, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-5995 Filed 3-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 86-AWP-34]

Proposed Alteration of Jet Route J-6, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-6 located in the vicinity of Palmdale, CA. The current alignment of J-6 is between Big Sur, CA, via a south dogleg to Palmdale, CA. This action proposes to realign J-6 between Salinas, CA, via Avenal, CA, to Palmdale. Aircraft operating along that portion of J-6 are normally vectored north before proceeding over Palmdale. This action would realign J-6 to an area where aircraft are usually vectored, thereby reducing controller workload.

DATE: Comments must be received on or before May 4, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWP-34, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWP–34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J–6 located in the vicinity of Palmdale, CA. The current alignment is not normally used because traffic in that area is vectored toward Palmdale. This action would reduce controller workload. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—[AMENDED]

1. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–6 [Amended]

By removing the words "From Big Sur, CA, via INT Big Sur 137° and Palmdale, CA, 291° radials; Palmdale;" and by substituting the words "From Salinas, CA, via INT Salinas 145°T(128°M) and Avenal, CA, 292°T(276°M) radials; Avenal; INT Avenal 119°(103°M) and Palmdale, CA, 310°T(295°M) radials; Palmdale;"

Issued in Washington, DC, on March 12, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–5997 Filed 3–19–87; 8:45 am]

BILLING CODE 4910–13–M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1609, 1618, 1621, 1624, 1630, 1633, 1636, 1639, 1642, 1648, 1651, 1653, 1657, and 1698

Registrant Processing

AGENCY: Selective Service System.

ACTION: Proposed rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) are proposed to be revised to assure greater fairness and efficiency in administration in the processing of registrants.

DATES: Comment Date: Written comments received on or before May 19, 1987, will be considered.

Effective date: Subject to the comments received, the amendments are proposed to become effective upon publication in the **Federal Register** of a final rule.

ADDRESS: Written comments to: Selective Service System, ATTN: General Counsel Washington, DC 20435.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435 Phone (202) 724–1167.

SUPPLEMENTARY INFORMATION: These proposed amendments to Selective Service Regulations are published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These regulations implement the Military Selective Service Act (50 U.S.C. App 451 et seq.).

Discussion of Proposed Regulations

Paragraphs 5, 49, 56, and 60 proposed changes in regulations to clarify provisions relative to the assignments of registrants to local boards and transfers for classification. These proposals reflect a recognition of the fact that the importance of local board actions in classifying a registrant is of greater concern to him than the board's activity in recordkeeping. The proposed changes would enable a registrant to have his claims for reclassification to be considered by a local board convenient to him without the administrative inconvenience that would accompany the change of his local board assignment.

Paragraphs 10 and 66 propose regulations for the processing of overseas registrants.

Paragraph 15 proposes the revocation of the requirement that a list of names and telephone numbers of persons who desire to advise registrants of their

rights under Selective Service law be posted in the area office. Section 1618.3 was improvidently added in 1982. The Selective Service System simply should not be in the business of advertising the services of those who desire to advise or assist registrants of the Selective Service System. Selective Service personnel will be available to provide information as registrants may desire when inductions are authorized. Persons who wish to make their services available to registrants with or without cost to the registrants are free to make their availability known to registrants by any lawful means.

Paragraphs 19, 22, 35, and 37 propose changes to provide that registrants be inducted when their deferments or exemptions have expired. The innovation in 1982 that a registrant who received a deferment at the time he was first issued an order to report for induction and the deferment has expired could not be ordered for induction unless persons in his age group were currently being inducted was unfortunate. Whatever the motive for the 1982 innovation it frustrates the purpose of portions of sections 6 [1] and 17(c) [2] of the Military Selective Service Act. That provision was reinforced by language in section 17(c). Furthermore, the innovation in 1982 in effect converts a deferment to a permanent exemption and thus eliminates the statutory consequence to registrants of having received deferments. The Selective Service System has the duty to carry out the will of Congress as expressed in the Military Selective Service Act and to avoid frustrating the statutory requirement.

Paragraphs 21, 27, 50, 51, and 53 would eliminate the special postponement of induction because of hardship to dependents. The innovation in 1982 provided for a postponement instead of deferment for registrants whose induction would result in hardship to their dependents for not more than 90 days. The innovation in 1982 is inconsistent with the provision of the Military Selective Service Act which authorizes deferments for registrants whose induction would result in hardship to their dependents.[3] Furthermore, there is no apparent reason why a registrant whose induction would cause a hardship to his dependents for 85 days should be treated differently than a registrant whose hardship to his dependents would last for 91 days.

Paragraphs 27, 28, 34, 36, 50, and 57 would establish an administrative classification for registrants separated from military service because of hardship to their dependents. Such registrants should be administratively classified on the basis of the Armed Service's determinations.

Paragraphs 29, 32, 34, 36, and 57 would remove from Class 4–A registrants classified therein on the basis of their having served as aliens in the military service of a foreign government and place them in Class 4–A–A. This action would facilitate the identification of such registrants.

Paragraph 58 would eliminate the automatic rescheduling of a registrant for a second personal appearance on his claim for Class 1–O. This current provision for automatic rescheduling is a ready-made device for the benefit of those who wish to delay the classification process without providing any additional safeguards to registrants who, for good reason, were unable to meet their scheduled personal appearance. These is no reason to assume that local boards would act unfairly on requests for rescheduling of personal appearances or explanations of failure to attend scheduled personal appearances. The registrant concerned would be fully protected by the procedures which exist for registrants scheduled for personal appearances with respect to other claims.

Paragraph 62 would restrict appeals from local board decisions on claims for administrative classifications to those decisions in which the local board was not unanimous. Issues to be decided by a local board reviewing an administrative classification are so narrow that it is unlikely that the board's decision will be overturned on appeal if the registrant had been unable to gain the support of at least one local board member. The proposed change will eliminate the potential harassment of the Selective Service System by the submission of frivolous claims and appeals.

Paragraph 67 adds Part 1698. Part 1698 would establish procedures whereby an individual for himself and governmental agencies for a named applicant may request and secure from the Selective Service System an advisory opinion as to whether the identified individual is or was required to register with the Selective Service System in accord with the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

The remaining paragraphs make conforming changes, cross references, correct printing errors, and clarify text.

Interested persons are invited to submit written comments on the proposed regulations. Reference should be made to the number of the paragraph or section to which comments are directed. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the General Counsel from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), I have determined that these regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 32 CFR Chapter XVI

Armed Forces—draft, Selective Service System.

Dated: March 17, 1987.

Wilfred L. Ebel,

Acting Director.

The proposed regulations are:

PART 1602—DEFINITIONS

1. The authority citation for Part 1602 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

2. Section 1602.2 is revised to read:

§ 1602.2 Administrative classification.

A reclassification action relating to a registrant's claim for Class 1–C, 1–D–D, 1–D–E, 1–H, 1–O–S, 1–W, 3–A–S, 4–A–A, 4–A, 4–B, 4–C, 4–F, 4–G, 4–T, or 4–W. These classes shall be identified as administrative classes.

3. Section 1602.11 is revised to read:

§ 1602.11 District Appeal Board.

A district appeal board or a panel thereof of the Selective Service System

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[1] "[P]ersons who are or may be deferred . . shall remain liable for training and service in the Armed Forces . . until the thirty-fifth anniversary of the date of their birth."

* * * * *

"No deferment from training and service shall continue after the cause therefor ceases to exist."

[2] "[N]o person shall be inducted for training and service in the Armed Forces after July 1, 1973, except persons now or hereafter deferred under section 6 of this title after the basis for such deferment ceases to exist."

[3] Section 6(h) in pertinent part provides: "The President is also authorized, under such rules and regulations as he may prescribe, to provide for the deferment from training and service in the Armed Forces (1) of any or all categories of persons in a status with respect to persons . . . dependent upon them for support which renders their deferment advisable. . . ."

is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of Part 1651 of this chapter.

4. Section 1602.14 is revised to read:

§ 1602.14 Local board.

A local board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President after nomination by a Governor to act on cases of registrants in accord with the provisions of Part 1648 of this chapter.

5. Section 1602.15 is revised to read:

§ 1602.15 Local board of jurisdiction.

The local board of jurisdiction is the local board to which a registrant is assigned and which has authority, in accord with the provisions of this chapter, to determine his claim or to issue to him an order. "His local board" and "registrant's local board" refer to the local board of jurisdiction.

6. Section 1602.18 is revised to read:

§ 1602.18 National Appeal Board.

The National Appeal Board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of Part 1653 of this chapter.

7. Section 1602.24 is revised to read:

§ 1602.24 Claim.

A "claim" is a request for postponement of induction or classification into a class other than 1-A.

8. Section 1602.25 is revised to read:

§ 1602.25 Director.

Director is the Director of Selective Service.

PART 1605—SELECTIVE SERVICE SYSTEM ORGANIZATION

9. The authority citation for Part 1605 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

§ 1605.51 [Amended]

10. In § 1605.51, paragraph (b) is removed and reserved.

11. Section 1605.81(b) is revised to read:

§ 1605.81 Interpreters.

* * * * *

(b) The following oath shall be administered by a member of the board or a compensated employee of the System to an interpreter each time he or she interprets:

Do you swear (or affirm) that you will truly interpret in the matter now in hearing?

* * * * *

PART 1609—UNCOMPENSATED PERSONNEL

12. The authority citation for Part 1609 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

13. Section 1609.1 is revised to read:

§ 1609.1 Uncompensated positions.

Members of civilian review boards, local boards, and district appeal boards and all other persons volunteering their services to assist in the administration of the Selective Service Law shall be uncompensated. No person serving without compensation shall accept remuneration from any source for services rendered in connection with Selective Service matters.

PART 1618—NOTICE TO REGISTRANTS

14. The authority citation for Part 1618 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

§ 1618.3 [Removed]

15. Section 1618.3 is removed.

PART 1621—DUTY OF REGISTRANTS

16. The authority citation for Part 1621 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

17. Section 1621.1 is revised to read:

§ 1621.1 Reporting by registrants of their current status.

Until otherwise notified by the Director of Selective Service, it is the duty of every registrant who registered after July 1, 1980:

(a) To notify the System within 10 days of any change in the following items of information that he provided on his registration form: name, current mailing address and permanent residence address; and

(b) To submit to the classifying authority, all information concerning his status within 10 days after the date on which the classifying authority mails him a request therefor, or within such longer period as may be fixed by the classifying authority; and

(c) Who has a postponement of induction, or has been deferred or exempted from training and service, to notify the System immediately of any changes in facts or circumstances relating to the postponement, deferment or exemption; and

(d) Who has a postponement of examination, to notify the System immediately of any changes in facts or circumstances relating to the postponement.

PART 1624—INDUCTIONS

18. The authority citation for Part 1624 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

19. Section 1624.4 (b) and (c) are revised to read:

§ 1624.4 Selection and/or scheduling of registrants for induction.

* * * * *

(b) Registrants whose postponements have expired in the order of expiration.

(c) Registrants who previously have been ordered to report for induction and whose exemptions or deferments have expired, in the order of their random sequence number (RSN) established by random selection procedures in accord with § 1624.1.

* * * * *

20. Section 1624.5(a) is revised to read:

§ 1624.5 Order to report for induction.

(a) Immediately upon determining which persons are to be ordered for induction, the Director of Selective Service shall issue to each person selected an Order to Report for Induction. The order will be sent to the current address most recently provided by the registrant to the Selective Service System. The date specified to report for induction shall be at least 10 days after the date on which the Order to Report for Induction is issued. The filing of a claim for reclassification in accord with § 1633.2 of this chapter delays the date the registrant is required to report for induction until not earlier than the tenth day after the claim is determined to have been abandoned or is finally determined in accord with the provisions of this chapter. A claim is finally determined when the registrant does not have a right to appeal the last classification action with respect to the claim or he fails to exercise his right to appeal.

* * * * *

21. Section 1624.6, paragraphs (a) and (e) are removed and reserved; paragraphs (b) and (j) are revised, to read:

§ 1624.6 Postponement of induction.

(a) [Reserved]

(b) In the case of the death of a member of the registrant's immediate

family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control, the Director, after the Order to Report for Induction has been issued, may postpone for a specific time the date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the induction order. When necessary, the Director may grant one further postponement, but the total postponement shall not exceed 90 days from the reporting date on the induction order.

* * * * *

(e) [Reserved]

* * * * *

(j) The initial determination of claims for all postponements is made by area office compensated personnel. After a denial of a claim for a student postponement, the registrant may request the local board to consider the claim. Such registrant shall be afforded an opportunity to appear before the board in accord with the procedures of §§ 1648.4 and 1648.5.

22. Section 1624.7 is revised to read:

§ 1624.7 Expiration of deferment or exemption.

The Director shall issue an Order to Report for Induction to a registrant who is liable for induction whenever his deferment or exemption expires.

23. Section 1624.10 is revised to read:

§ 1624.10 Order to report for examination.

(a) The Director of Selective Service may order any registrant in Class 1–A who has filed a claim for classification in a class other than Class 1–A or whose induction has been postponed, to report for an Armed Forces examination to determine acceptability for military service. The date specified to report for examination shall be at least 7 days after the date on which the Order to Report for Examination is issued. Such registrant will not be inducted until his claim for reclassification has been decided or abandoned.

(b) The reporting date for examination may be postponed for any reason a reporting date for induction may be postponed in accord with § 1624.6(b), (d) or (f)(1).

(c) If a registrant fails to report or complete an examination the local board will determine that he has abandoned his claim.

(d) If a registrant is determined not acceptable for military service, he will be reclassified in Class 4–F.

(e) If a registrant is determined not acceptable for military service, the processing of his claim will be completed.

PART 1630—CLASSIFICATION RULES

24. The authority citation for Part 1630 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et. seq., E.O. 11623.

25. Section 1630.13 is revised to read:

§ 1630.13 Class 1–D–D: Deferment for certain members of a reserve component or student taking military training.

In Class 1–D–D shall be placed any registrant who:

(a)(1) Has been selected for enrollment or continuance in the Senior (entire college level) Army Reserve Officer's Training Corps, or the Air Force Reserve Officer's Training Corps, or the Naval Reserve Officer's Training Corps, or the Naval and Marine Corps officer candidate program of the Navy, or the platoon leader's class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or is appointed an ensign, U.S. Naval Reserve while undergoing professional training; and

(2) Has agreed in writing to accept a commission, if tendered, and to serve subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Transportation with respect to the U.S. Coast Guard), not less than 2 years on active duty after receipt of a commission; and

(3) Has agreed to remain a member of a regular or reserve component until the eighth anniversary of his receipt of a commission. Such registrant shall remain eligible for Class 1–D–D until completion or termination of the course of instruction and so long thereafter as he continues in a reserve status upon being commissioned except during any period he is eligible for Class 1–C under the provisions of § 1630.12; or

(b) Is a fully qualified and accepted aviation cadet applicant of the Army, Navy, or Air Force, who has signed an agreement of service and is within such numbers as have been designated by the Secretary of Defense. Such registrant shall be retained in Class 1–D–D during the period covered by such agreement but in no case in excess of four months; or

(c) Is other than a registrant referred to in paragraph (a) or (d) of this section who:

(1) Prior to the issuance of orders for him to report for induction; or

(2) Prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction; or

(3) Prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction:

enlists or accepts an appointment before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard. Such registrant shall remain eligible for Class 1–D–D so long as he serves satisfactorily as a member of an organized unit of such Ready Reserve or National Guard, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense, or serves satisfactorily as a member of the Ready Reserve of another reserve component, the Army National Guard, or the Air National Guard, as the case may be; or

(d) At any time has enlisted in the Army Reserve, the National Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve and who thereafter has been commissioned therein upon graduation from an Officer's Candidate School of such Armed Force and has not been ordered to active duty as a commissioned officer. Such registrant shall remain eligible for Class 1–D–D so long as he performs satisfactory service as a commissioned officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned; or

(e) Is serving satisfactorily as a member of a reserve component of the Armed Forces and is not eligible for Class 1–D–D under the provisions of any other paragraph of this section:

Provided: That, for the purpose of this paragraph, a member of a reserve component who is in the Standby Reserve or the Retired Reserve shall be deemed to be serving satisfactorily unless the Armed Force of which he is a member informs the Selective Service System that he is not serving satisfactorily.

26. Section 1630.18 is revised to read:

§ 1630.18 Class 1-W: Conscientious objector ordered to perform alternative service.

In Class 1-W shall be placed any registrant who has been ordered to perform alternative service contributing to the maintenance of the national health, safety, or interest.

27. Section 1630.30 is revised to read:

§ 1630.30 Class 3-A: Registrant deferred because of hardship to dependents.

(a) In accord with Part 1642 of this chapter any registrant shall be classified in Class 3-A:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) The classification of each registrant in Class 3-A will not be granted for a period longer than 365 days.

28. Section 1630.31 is revised to read:

§ 1630.31 Class 3-A-S: Registrant deferred because of hardship to dependents (separated).

Any registrant who has been separated from active military service by reason of dependency or hardship shall be placed in Class 3-A-s unless his period of military service qualifies him for Class 4-A or 1-D-E. No registrant shall be retained in Class 3-A-S for more than six months.

29. Section 1630.40(a) introductory text is revised and (a)(4) is removed and reserved:

§ 1630.40 Class 4-A: Registrant who has completed military service.

(a) In Class 4-A shall be placed any registrant other than a registrant eligible for classification in Class 1-C, 1-D-D, or 1-D-E who is within any of the following categories:

* * * * *

(4) [Reserved]

* * * * *

30. Section 1630.44 is revised to read:

§ Section 1630.44 Class 4-F: Registrant not qualified for military service.

In Class 4-F shall be placed any registrant who is found by the Secretary of Defense, under applicable physical, mental or administrative standards, to be not acceptable for service in the Armed Forces; except that no registrant whose further examination or re-examination is determined by the Secretary of Defense to be justified shall be placed in Class 4-F until such further examination has been accomplished and such registrant continues to be found not acceptable for military service.

31. In § 1630.45 the section heading and (a) are revised to read as follows:

§ 1630.45 Class 4-G: Registrant exempted from service because of the death of his parent or sibling while serving in the Armed Forces or whose parent or sibling is in a captured or missing in action status.

* * * * *

(a) A surviving son or brother:

(1) Whose parent or sibling of the whole blood was killed in action or died in the line of duty while serving in the Armed Forces of the United States after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in the line of duty during such service; or

(2) Whose parent or sibling of the whole blood is in a captured or missing status as a result of such service in the Armed Forces during any period of time; or

* * * * *

32. Section 1630.48 is revised to read:

§ 1630.48 Class 4-A-A: Registrant who has performed military service for a foreign nation.

In Class 4-A-A shall be placed any registrant who, while an alien, has served on active duty for a period of not less than 12 months in the armed forces of a nation determined by the Department of State to be a nation with which the United States is associated in mutual defense activities and which grants exemptions from training and service in its armed forces to citizens of the United States who have served on active duty in the Armed Forces of the United States for a period of not less than 12 months; Provided: That all information which is submitted to the Selective Service System concerning the registrant's service in the armed forces of a foreign nation shall be written in the English language.

PART 1633—ADMINISTRATION OF CLASSIFICATION

33. The authority citation for Part 1633 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

34. Section 1633.1(e) and (f) are revised to read as follows:

§ 1633.1 Classification authority.

* * * * *

(e) A local board may also classify a registrant into Class 1-C, 1-D-D, 1-D-E, 1-O-S, 1-W, 3-A-S, 4-A, 4-A-A, 4-B, 4-C, 4-F, 4-G, 4-T or 4-W for which he is eligible upon request by the registrant for a review of a classificaiton denial action under § 1633.1(f). No individual shall be classification into Class 4-F unless the Secretary of Defense has determined that he is unacceptable for military service.

(f) Compensated employees of an area office in accord with § 1633.2 classify a registrant into an administrative class for which he is eligible. No individual shall be classified into Class 4-F unless the Secretary of Defense has determined that he is unacceptable for military service.

35. Section 1633.2 is revised to read:

§ 1633.2 Claim for other than Class 1-A.

(a) Any registrant who has received an order to report for induction may, prior to the day he is scheduled to report, submit to the Selective Service System a claim that he is eligible to be classified into any class other than Class 1-A. The registrant may assert a claim that he is eligible for more than one class other than Class 1-A. The registrant cannot subsequently file a claim with respect to a class for which he was eligible prior to the day he was originally scheduled to report. Information and documentation in support of claims for reclassification and postponement of induction shall be filed in accordance with instructions from the Selective Service System.

(b) Any registrant who has received an order to report for induction that has not been canceled may, at any time before his induction, submit a claim that he is eligible to be classified into any class other than Class 1-A based upon events over which he has no control that occurred on or after the day he was originally scheduled to report for induction.

(c)(1) Claims will be filed with the area office supporting the local board of jurisdiction.

(2) Claims will be considered by the local board identified in paragraph (c)(1) or its supporting area office as prescribed in this part.

(d) The initial determination of claims for all administrative classifications are made by area office compensated personnel. After a denial of a claim for an administrative classification the registrant may request the local board to consider the claim.

(e) The initial determination of a judgmental classification is made by a local board.

(f) A registrant may request and shall be granted a personal appearance whenever a local or appeal board considers his claim for reclassification.

Personal appearances will be held in accord with Parts 1648, 1651 and 1653 of this chapter.

(g) A registrant who has filed a claim for classification in Class 1–A–O or Class 1–O shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

(h) If granted, a deferment or exemption supersedes the original order to report for induction. When a deferment or exemption expires or ends, a new order to report for induction will be issued.

36. Section 1633.6 is revised to read:

§ 1633.6 Consideration of classes.

Claims of a registrant will be considered in inverse order of the listing of the classes below. When grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1–A–O considered the highest class and Class 1–H considered the lowest class, according to the following table:

Class 1–A–O: Conscientious Objector Available for Noncombatant Military Service Only.
Class 1–O: Conscientious Objector to all Military Service.
Class 1–O–S: Conscientious Objector to all Military Service (Separated).
Class 2–D: Registrant Deferred Because of Study Preparing for the Ministry.
Class 3–A: Registrant Deferred Because of Hardship to Dependents.
Class 3–A–S: Registrant Deferred Because of Hardship to Dependents (Separated).
Class 4–D: Minister of Religion.
Class 1–D–D: Deferment for Certain Members of a Reserve Component or Student Taking Military Training.
Class 4–B: Official Deferred by Law.
Class 4–C: Alien or Dual National.
Class 4–G: Registrant Exempted From Service Because of the Death of his Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action Status.
Class 4–A: Registrant Who Has Completed Military Service.
Class 4–A–A: Registrant Who Has Performed Military Service For a Foreign Nation.
Class 4–W: Registrant Who Has Completed Alternative Service in Lieu of Induction.
Class 1–D–E: Exemption of Certain Members of a Reserve Component or Student Taking Military Training.
Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.
Class 1–W: Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.
Class 4–T: Treaty Alien.
Class 4–F: Registrant Not Acceptable for Military Service.
Class 1–H: Registrant Not Subject to Processing for Induction.

37. Section 1633.7(b) is revised to read as follows, and (c) is removed:

§ 1633.7 General principles of classification.

* * * * *

(b) The classifying authority in considering a registrant's claim for classification shall not discriminate for or against him because of his race, creed, color or ethnic background and shall not discriminate for or against him because of his membership or activity in any labor, political, religious, or other organization.

38. Section 1633.10 is revised to read:

§ 1633.10 Notification to registrant of classification action.

The Director will notify the registrant of any classification action.

39. Section 1633.11 is revised to read:

§ 1633.11 Assignment of registrant to a local board.

(a) A registrant is assigned to the local board that has jurisdiction over his permanent address that he last furnished the Selective Service System prior to the issuance of his induction order.

(b) The Director may change a registrant's assignment when he deems it necessary to assure the fair and equitable administration of the Selective Service Law.

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

40. The authority citation for Part 1636 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

41. Section 1636.3(a) is revised to read:

§ 1636.3 Basis for classification in Class 1–A–O.

(a) A registrant must be conscientiously opposed to participation in combatant training and service in the Armed Forces.

* * * * *

42. In § 1636.6, the section heading is revised to read:

§ 1636.6 Analysis of belief.

* * * * *

43. Section 1636.8(a)(3) is revised to read:

§ 1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.

(a) * * *

(3) The oral statements of the registrant's witnesses, if any, at his personal appearance(s) before the local board; and

* * * * *

PART 1639—CLASSIFICATION OF REGISTRANTS PREPARING FOR THE MINISTRY

44. The authority citation for Part 1639 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

45. Section 1639.3(a)(1) is revised to read:

§ 1639.3 Basis for classification in Class 2–D.

(a) * * *

(1) Who is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled or accepted for admission; or

* * * * *

46. In § 1639.6 the section heading is revised to read as follows:

§ 1639.6 Considerations relevant to granting or denying claims for Class 2–D

* * * * *

47. Section 1639.7(c) is revised to read:

§ 1639.7 Types of decisions.

* * * * *

(c) The board may deny a claim for Class 2–D when the evidence fails to meet any of the criteria established in this section.

PART 1642—[AMENDED]

48. The authority citation for Part 1642 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

49. In Part 1642, the heading is revised to read:

PART 1642—CLASSIFICATION OF REGISTRANTS DEFERRED BECAUSE OF HARDSHIP TO DEPENDENTS

50. Section 1642.3 is revised to read:

§ 1642.3 Basis for classification in Class 3–A

(a) In Class 3–A shall be placed any registrant:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support.

(b) In its consideration of a claim by a registrant for classification in Class 3–A, the board will first determine whether the registrant's wife, child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon the registrant for support. Support may be financial assistance, personal care of companionship. If financial assistance is the basis of support, the registrant's contribution must be a substantial portion of the necessities of the dependent. Under most circumstances 40 to 50% of the cost of the necessities may be considered substantial. If that determination is affirmative, the board will determine whether the registrant's induction would result in extreme hardship to this wife when she is the only dependent, or whether the registrant's deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support, or because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support. A deferment is advisable whenever the registrant's induction would result in hardship to his dependents.

(c) The registrant's classification shall be determined on the basis of the written information in his file, oral statements, if made by the registrant at his personal appearance before a board, and oral statements, if made by the registrant's witnesses at his personal appearances.

51. Section 1642.4(a)(4) is revised to read as follows, and (b) is removed and reserved.

§ 1642.4 Ineligibility for Class 3–A.

(a) * * *

(4) There are other persons willing and able to assume the support of his dependents; or

* * * * *

52. Section 1642.5 is added to read as follows:

§ 1642.5 Impartiality.

(a) Boards shall consider all questions in a claim for classification in Class 3–A with equal consideration of race, creed, color, sex or ethnic background.

(b) Boards may not give precedence to one type of dependency hardship over another.

53. Section 1642.7(a) is revised to read as follows, and (c) is removed and reserved.

§ 1642.7 Types of decisions.

(a) A board may grant a classification into Class 3–A for such period of time it deems appropriate but in no event shall the period exceed one year.

* * * * *

(c) [Reserved]

* * * * *

PART 1648—CLASSIFICATION BY LOCAL BOARD

54. The authority citation for Part 1648 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

55. Section 1648.1 is revised to read:

§ 1648.1 Authority of local board.

A local board shall consider and determine all claims which it receives in accord with § 1633.2 or § 1648.6 of this chapter. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

§ 1648.2 [Removed]

56. Section 1648.2 is removed.

57. Section 1648.3(a) and (c) are revised to read as follows:

§ 1648.3 Opportunity for personal appearances.

(a) A registrant who has filed a claim for classification in Class 1–A–O or Class 1–O shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

* * * * *

(c) Any registrant who has filed a claim for classification in an administrative class and whose claim has been denied, shall be afforded an opportunity to appear before the board if he requests that the denial of such claim be reviewed by the board.

58. Section 1648.4(b) is revised to read:

§ 1648.4 Appointment for personal appearances.

* * * * *

(b) Should the registrant who has filed a claim for classification in Class 1–A–O or Class 1–O fail to appear at his scheduled personal appearance, the board will not consider his claim for classification in Class 1–A–O or Class 1–O. The board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant's failure to appear was for good cause it shall reschedule the registrant's personal appearance. If the board does not receive a timely written explanation of the registrant's failure to appear for his scheduled personal appearance or if the board determines that the registrant's failure to appear was not for good cause, the registrant will be deemed to have abandoned his claim for Class 1–A–O or 1–O and will be notified that his claim will not be considered. The board will notify the registrant in writing of its action under this paragraph.

59. Section 1648.5(a) and (i) are revised to read:

§ 1648.5 Procedures during personal appearance before the local board.

(a) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

(i) Proceedings before the local boards shall be open to the public only upon the request of or with the permission of the registrant. The board chairman may limit the number of persons attending the hearing in order to maintain order. If during the hearing the presence of nonparticipants in the proceeding becomes disruptive, the chairman may close the hearing.

60. Section 1648.6(a) is revised to read:

§ 1648.6 Registrants transferred for classification.

(a) Before a board of jurisdiction has undertaken the classification of a registrant, the file may, at his request, be transferred for classification to a local board nearer to his current address than is the local board of jurisdiction.

* * * * *

PART 1651—CLASSIFICATION BY DISTRICT APPEAL BOARD

61. The authority citation for Part 1651 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

62. Section 1651.1(b) is revised to read:

§ 1651.1 Who may appeal to a district appeal board.

* * * * *

(b) The registrant may appeal to a district appeal board the denial of his claim for a judgmental classification by the local board. The registrant may appeal to a district appeal board the denial of his claim for an administrative classification by the local board whenever its decision is not unanimous.

63. Section 1651.4(a), (j), (n)(3) and (r) are revised to read as follows:

§ 1651.4 Review by district appeal board.

(a) An appeal to the district appeal board is determined by the classification of the registrant in a class other than 1–A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

* * * * *

(j) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(n) * * *

(3) Has abandoned his right to an opportunity to appear; or

* * * * *

(r) Proceedings before the appeal boards shall be open to the public only upon the request of or with the permission of the registrant. The board chairman may limit the number of persons attending the hearing in order to maintain order. If during the hearing the presence of non-partcipants in the proceedings becomes disruptive the chairman may close the hearing.

PART 1653—APPEAL TO THE PRESIDENT

64. The authority citation for Part 1653 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

§ 1653.3 Review by the National Appeal Board.

65. In § 1653.3, the section heading and paragraphs (a) and (k) are revised to read: § 1653.3 Review by the National Appeal Board.

(a) An appeal to the President is determined by the National Appeal Board by its classification of the registrant in a class other than 1–A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

(k) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

66. Part 1657 is revised to read:

PART 1657—OVERSEAS REGISTRANT PROCESSING

Sec.

Authority: Military Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

§ 1657.1 Purpose; definition.

(a) The provisions of this part apply to the processing of overseas registrants, and, where applicable, they supersede inconsistent provisions in this chapter.

(b) An overseas registrant is a registrant whose bona fide current address most recently provided by him to the Selective Service System is outside the United States, its territories or possessions, Commonwealth of Puerto Rico, Canada and Mexico.

§ 1657.2 Local boards.

The Director shall establish local boards with jurisdiction to determine claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board, and designate or establish an area office to support it.

§ 1657.3 District appeal boards.

The Director shall establish district appeal boards with jurisdiction to determine appeals of claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board.

§ 1657.4 Consideration of claims.

An overseas registrant's claim shall be determined by a local board (or its supporting area office) or appeal board as may be established in accord with this part or, upon the request of the registrant filed no later than the filing of his claim for reclassification, by the board having geographic jurisdiction over his permanent address within the United States last reported by him to the Selective Service system prior to issuance of his induction order.

§ 1657.5 Place of induction.

The Director may order an overseas registrant to any place in the world for induction.

§ 1657.6 Transportation.

(a) The Director shall furnish transportation for an overseas registrant from the place at which the registrant's order to report for induction was sent to the place he is required to report for induction. If such registrant is not inducted, the Director shall furnish him transportation from the place he reported for induction to the place to which his order to report for induction was sent.

(b) In the event the personal appearance before a local board or appeal board of an overseas registrant is required or permitted by regulation, travel expenses incurred in personally appearing before the board shall be at the registrant's own expense.

67. Part 1698 is added to read:

PART 1698—ADVISORY OPINIONS

Sec.

Authority: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*, E.O. 11623.

§ 1698.1 Purpose.

The provisions of this part prescribe the procedures for requesting and processing requests for advisory opinions relative to a named individual's liability for registration under the Military Selective Service Act (MSSA), 50 U.S.C. App. 451 *et seq.*

§ 1698.2 Requests for advisory opinions.

(a) Any male person born after December 31, 1959 who has attained 18 years of age may request an advisory opinion as to his liability to register under MSSA. Any Federal, state or municipal governmental agency may request an advisory opinion as to the liability of any male person born after December 31, 1959 who has attained 18 years of age to register under MSSA.

(b) Requests for advisory opinions shall be in writing and addresed to Director of Selective Service, ATTN: GCAO, Washington, DC 20435. With respect to the person concerning whom an advisory opinion is requested, the following should be furnished: full name, address, date of birth, Social Security Account Number; basis for the opinion that the registration requirement is inapplicable to him, and, if applicable, basis for his assertion that his failure to register ". . . was not a knowing and willful failure to register."

§ 1698.3 Requests for additional information.

(a) The Director may request additional appropriate information from the requester for an advisory opinion.

(b) The Director will forward a copy of the request by a Federal, state or municipal governmental agency for an

advisory opinion to the person to whom the request pertains and invite his comments on it.

§ 1698.4 Confidentiality of advisory opinions and requests for advisory opinions.

Advisory opinions will be confidential except as provided in § 1698.6. Requests for advisory opinions will be confidential except as provided in § 1698.3.

§ 1698.5 Basis of advisory opinions.

Advisory opinions will be based on the request therefor, responses to requests for information, and matters of which the Agency can take official notice.

§ 1698.6 Issuance of advisory opinions.

A copy of the advisory opinion will be furnished, without charge, to the requester therefor and to the individual to whom it pertains. A copy of an advisory opinion will be furnished, without charge, to any Federal, state, or municipal governmental agency upon request.

§ 1698.7 Reconsideration of advisory opinions.

Whenever the Director has reason to believe that there is substantial error in the information on which an advisory opinion is based, he may reconsider it and issue an appropriate revised opinion.

§ 1698.8 Effect of advisory opinion.

The Selective Service System will not take action with respect to whom it has issued an advisory opinion inconsistent with the pertinent advisory opinion.

[FR Doc. 87-6127 Filed 3-19-87; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-3172-2]

Approval and Promulgation of Implementation Plans, Commonwealth of the Northern Mariana Islands; Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed rulemaking.

SUMMARY: Through this notice EPA solicits comments on a proposal to approve portions of the "State" Implementation Plan (SIP) for the Commonwealth of the Northern Mariana Islands (CNMI). This action affects the CNMI air pollution control regulations for the preconstruction review of new and modified major stationary sources of lead (Pb). Generic and Pb specific new source review (NSR) rules have been adopted with the opportunity for public hearing, but portions have not yet been officially submitted to EPA as a SIP revision. EPA proposes to approve adopted rules affecting NSR, when officially submitted as a SIP revision, provided they are substantively similar to those reviewed. Such EPA approval, authorized under § 110 of the Clean Air Act (CAA), expedites the approval process and provides states with federal enforceability of local rules. This approval, when finalized, will complete EPA action on the SIP for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for Pb.

DATES: Written comments may be submitted on or before April 20, 1987.

ADDRESSES: Comments may be sent to Morris I. Goldberg, State Implementation Plan Section, at the EPA Regional Office address listed below. Copies of EPA's evaluation report, as well as the rules which are the subject of this action, are available for public inspection during business hours at the EPA Region 9 Office and at the following location: Commonwealth of the Northern Mariana Islands, Department of Public Health and Environmental Services, Dr. Torres Hospital, Saipan, Mariana Islands 96950.

FOR FURTHER INFORMATION CONTACT: Morris I. Goldberg, State Implementation Plan Section, Air Management Division (A-2-3), Environmental Protection Agency, Region 9, 215 Fremont Street, 1st Floor, San Francisco, CA 94105, Telephone: (415) 974-7651. FTS 454-7651.

SUPPLEMENTARY INFORMATION:

Background

The CNMI was first defined as a "State" for purposes of the CAA in the 1977 amendments (§ 302(d)). Unlike other states, CNMI was not required to submit a SIP to EPA in 1972, but was required to do so after 1977.

On March 3, 1978 (43 FR 8970), EPA promulgated its first attainment status designations, as authorized at paragraph 107(d)(2) of the CAA. CNMI was designated as attainment and/or unclassified for all section 107 pollutants. CAA § 107 is not applicable to Pb, since Pb became a criteria pollutant after 1977. Thus, specific NSR requirements under Part D of the CAA do not apply to CNMI. Only CAA § 110 requirements apply.

Evaluation

The CNMI SIP was first submitted on February 19, 1986. Certain NSR rules submitted at that time have since been superceded by revised rules, adopted, but not yet officially submitted.

CNMI does not require public hearings on regulations. The Governor, in transmitting the SIP states that the public participation procedures have been satisfied. The CNMI administrative procedures require a 30 day comment period and the opportunity for participation through a public hearing, upon request. These procedures are in accord with 40 CFR 51.102(g), (old 51.4(e)).

The CNMI regulations do not require that modifications to lead sources with actual emissions of lead in excess of 5 tons per year undergo preconstruction review if the modification will result in a net increase of 0.6 or more tons per year of potential emissions. EPA does not consider this to be an immediate problem since CNMI presently has no stationary point sources of lead (November 10, 1986, 51 FR 40798). However, if and when a lead source is constructed, a SIP revision will be required in order to address any modifications at the source.

EPA requires under § 51.161(d) that copies of the notice for the opportunity of public comment required under § 51.161(b)(3) be sent to the Administrator of EPA through the Regional Office. The CNMI regulations require that the notice of public comment be sent "to officials and agencies having cognizance over the location where the proposed action would occur." EPA interprets this language as meeting the requirements of § 51.161(b)(3).

The revised rules were evaluated by EPA to determine approvability under CAA § 110, in accord with the Requirements for Preparation, Adoption and Submittal of Implementation Plans at 40 CFR Part 51, Subpart I, (old 51.18), Review of New Sources and Modifications. EPA's complete evaluation is contained in the previously cited report. EPA proposes to find that the CNMI rules safisfy the SIP NSR requirements for Pb.

EPA approval of the CNMI regulations affecting NSR for Pb, together with the final approval of the other portion of the Pb SIP, (November 10, 1986, 51 FR 40798), will result in a Pb plan that has been completely approved. This action does not preclude EPA authority to act on the CNMI SIP as it relates to the requirements for the Prevention of Significant Deterioration. All portions of

the February 19, 1986 submittal and the revised regulations will be the subject of a separate notice affecting the attainment and maintenance of the NAAQS for the other criteria pollutants.

Proposed Action

This notice proposed to approve the CNMI rules affecting the review of new and modified major stationary sources of lead.

Regulatory Process

Under 5 U.S.C., section 605(b), I certify that this action will not have a significant economic impact on a substantial number of small business entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, *Reporting and Recordkeeping requirements.*

Authority: 42 U.S.C. 7401–7642.

Dated: January 23, 1987.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 87–6072 Filed 3–19–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6907]

Proposed Flood Elevation Determinations, California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insuance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determines, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	Carlsbad (City), San Diego County.	Pacific Ocean:	At a point 1,000 feet north along the shore from Pacific Avenue Extended.	*6	*11
			At a point 500 feet north along the shore from Pacific Avenue Extended.	*6	*11
			At Grand Avenue Extended	None	*10
			At Cannon Road Extended	*6	*9
			At Cerezo Drive Extended	None	*10
			At a point 400 feet north along the shore from Manzano Drive Extended.	None	*11
			At a point 200 feet north along the shore from Manzano Drive Extended.	None	*12
			Adjacent to the intersection of Carlsbad Boulevard and Palomar Airport Road.	None	*13
			Adjacent to a point on Carlsbad Boulevard 0.7 mile south of its intersection with Palomar Airport road.	None	*9
			At Poinsettia Lane Extended	None	*13

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Engineering Department, 1200 Elm Street, Carlsbad, California. Send comments to The Honorable Mary Casler, Mayor, City of Carlsbad, 1200 Elm Avenue, Carlsbad, California 92008.					
California	City of Lake Elsinore, Riverside County.	Lake Elsinore	Entire Shoreline	*1,265	*1,267
Maps are available for inspection at City Hall, 130 South Main Street, Lake Elsinore, California. Send comments to Mayor Leon Strigotte, City Hall, 130 South Main Street, Lake Elsinore, California 92330.					
Connecticut	Plainville, Town, Harford County	Pequabuck River	Just downstream of upstream CONRAIL crossing	*181	*182
			Approximately 250 feet upstream of upstream State route 72 crossing.	*193	*194
			Approximately 500 feet downstream of upstream corporate limits.	*195	*196
Maps are available for inspection at the Town Hall, Plainville, Connecticut. Send comments to The Honorable John Bohnko, Town Manager of Plainville, Hartford County, P.O. Box 250, Plainville, Connecticut 06062					
Idaho	Bonner County	Pend Oreille River	River Mile 90.2 at Albini Falls Dam	*2,070	*2,063
			River Mile 93	*2,070	*2,064
			River Mile 94	*2,070	*2,065
			River Mile 95	*2,070	*2,066
			River Mile 96	*2,070	*2,067
			River Mile 103	*2,070	*2,068
			River Mile 110	*2,070	*2,069
		Lake Pend Oreille	River Mile 120	*2,071	*2,070
		Priest River	Confluence of the Pend Oreille River	*2,070	*2,066
			6,000 feet above the confluence of Pend Oreille River	*2,070	*2,067
			6,500 feet above the confluence of Pend Oreille River	*2,070	*2,068
			7,000 feet above the confluence of Pend Oreille River	*2,070	*2,069
			7,500 feet above the confluence of Pend Oreille River	*2,070	*2,070
Maps are available for inspection at the Bonner County Department of Public Works, 215 South First Street, Sandpoint, Idaho 83864. Send comments to Mr. James McNall, Chairman, Bonner County Board of Supervisors, 215 South First Street, Sandpoint, Idaho 83864.					
Idaho	City of Priest River, Bonner County.	Pend Oreille River	River Mile 93.6 at City of Priest River corporate limits	*2,070	*2,065
			River Mile 95.2 at confluence of the Preist River	*2,070	*2,066
		Priest River	At confluence of Pend Oreille River	*2,070	*2,066
			At corporate limits	*2,070	*2,066
Maps are available for inspection at the Office of the City Clerk, 209 High Street, Priest River, Idaho 83856. Send comments to The Honorable Gary Altmaier, Mayor, City of Priest River, P.O. Box 524, Priest River, Idaho 83856.					
Idaho	City of Sandpoint, Bonner County.	Pend Oreille River	River Mile 116.6 at Sandpoint corporate limits	*2,071	*2,070
		Lake Pend Oreille	River Mile 120	*2,071	*2,070
Maps are available for inspection at the Sandpoint Planning Office, 110 Main Street, Sandpoint, Idaho 83864. Send comments to The Honorable Marian L. Ebbett, Mayor, City of Sandpoint, 110 Main Street, Sandpoint, Idaho 83864.					
Maine	Kennebunkport, Town, York County.	Atlantic Ocean	Lake of the Woods Area (North of Walkers Point)	*9	*12
Maps are available for inspection at the Town Office, Elm Street, Kennebunkport, Maine. Send comments to The Honorable Jane Duncan, Town Manager of Kennebunkport, York County, P.O. Box 566, Kennebunkport, Maine 04046.					
Maryland	Leonardtown, Town, St. Mary's County.	McIntosh Run	Approximately 1.2 miles downstream of Jefferson Street.	*6	*7
			Approximately 0.6 mile downstream of Jefferson Street	*6	*8
			Approximately 1,900 feet downstream of Jefferson Street.	*8	*9
Maps are available for inspection at 28 Court House Drive, Leonardtown, Maryland. Send comments to The Honorable Edward H. Long, President of Commissioners for the Town of Leonardtown, Saint Mary's County, 28 Court House Drive, P.O. Box 1, Leonardtown, Maryland 20650.					
Michigan	Township of Bloomfield, Oakland County.	Murphy Drain	About 1,300 feet upstream of Vista Lane	*910	*910
			Just downstream of control structure (about 1,500 feet downstream of Meadowood Lane).	*912	*913
			Just upstream of control structure (about 1,500 feet downstream of Meadowood Lane).	*912	*915
			About 300 feet upstream of Meadowood Lane	*922	*918
Maps are available for inspection at the Township Supervisor's Office, 4200 Telegraph Road, P.O. Box 489, Bloomfield Hills, Michigan. Send comments to The Honorable Fred Korzon, Supervisor, Township of Bloomfield, 4200 Telegraph Road, P.O. Box 489, Bloomfield Hills, Michigan 48013.					
Nebraska	City of Bellevue, Sarpy County	Shallow flooding (pounding)	At Missouri River Mile 599.25, on the west side of Levee R-616, about 2.05 miles downstream of Mission Avenue.	*969	*961
			At Missouri River Mile 600.00, on the west side of Levee R-616, about 1.39 miles downstream of Mission Avenue.	*970	*961
			At Missouri River Mile 601.00, on the west side of Levee R-616, about 1750 feet downstream of Mission Avenue.	*971	*961

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are avialable for inspection at the Planning Commission, 210 West Mission Street, Bellevue, Nebraska.					
Send comments to The Honorable Joseph Baldwin, Mayor, City of Bellevue, 210 West Mission Street, Bellevue, Nebraska 68005.					
Nebraska	Unincorporated Areas of Sarpy County.	Shallow flooding (ponding)	At the confluence of Papillion Creek with the Missouri River, on the north side of the intersection of Levee R-613 and Levee R-616.	*967	*959
			About 1.46 miles upstream of the confluence of Papillion Creek along the Missour River on the west side of Levee R-616.	*968	*961
Maps are available for inspection at the Building Inspector's Office, Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska.					
Send comments to The Honorable Edward F. Gilbert, Chairman, Board of County Commissioners, Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska 68046.					
New Jersey	Ewing, Township, Mercer County	Delaware River	Approximately 500 feet downstream of I-95	*44	*45
			Approximately 0.6 mile downstream of confluence of Jacobs Creek.	*47	*48
		Jacobs Creek	Approximately 0.4 mile upstream of confluence with Delaware River.	*49	*48
			Approximately 1,000 feet downstream of confluence of Ewing Creek.	*64	*63
		Ewing Creek	Approximately 1,250 feet upstream of Jacobs Creek Road.	*85	*84
			Approximately 250 feet upstream of Nursery Road	*120	*121
			Approximately 600 feet downstream of Scotch Road	*150	*149
			Approximately 100 feet upstream of Scotch Road	*None	*154
		Shabakunk Creek	Approximately 1,100 feet upstream of confluence of West Branch Shabakunk Creek.	*64	*65
			Approximately 250 feet downstream of CONRAIL	*70	*71
			Approximately 200 feet downstream of Green Lane	*81	*83
			Upstream side of Lake Sylvia Dam	*94	*95
			Approximately 1,400 feet upstream of Ewingville Road	*98	*100
			Approximately 200 feet downstream of Bull Run Road	*110	*112
		West Branch Shabakunk Creek	Approximately 400 feet downstream of Spruce Street	*64	*67
			Approximately 175 feet upstream of Olden Avenue (downstream crossing).		
			Approximately 200 feet downstream of Prospect Street	*74	*76
			At Parkside Avenue	*80	*82
			Approximately 150 feet upstream of Thurston Avenue	*88	*89
			Approximately 325 feet upstream of Carlton Avenue	*116	*117
Maps are available for inspection at 1872 Pennington Road, Trenton, New Jersey.					
Send comments to The Honorable Alfred W. Bridges, Mayor of the Township of Ewing, Mercer County, Trenton, New Jersey 08618					
New Jersey	Waldwick Borough Bergen County	Ho Ho Kus Brook	Downstream corporate limits	*186	*187
			Approximately 500' upstream of Dam No. 2	*206	*207
			Approximately 900' upstream of Dam No. 2	*208	*208
			Approximately 420' downstream of Wyckoff Avenue	*212	*213
Maps are available for inspection at the Borough Clerk's Office, 15 East Prospect Street, Waldwick, New Jersey.					
Send comments to The Honorable Frank T. McKenna, Mayor of the Borough of Waldwick, Bergen County, 15 East Prospect Street, Waldwick, New Jersey 07463.					
New York	Greece, Town, Monroe County	Salmon Creek	At the confluence with Braddock Boulevard	*249	*248
			At Hogan Point Road (extended)	*251	*249
			At upstream corporate limits	*252	*250
Maps are available for inspection at 2505 West Ridge Road, Rochester, New York					
Send comments to The Honorable Donald J. Riley, Supervisor of the Town of Greece, 2505 West Ridge Road, Rochester, New York 14626.					
New York	Parma, Town, Monroe County	Salmon Creek	At the downstream corporate limits	*252	*250
			Approximately 1,900 feet downstream of Wilder Road	*258	*256
			At the most downstream Hilton corporate limits	*262	*261
			At the upstream Hilton corporate limits	*275	*270
			At Hill Road	*277	*274
		West Creek	At the downstream corporate limits	*252	*250
			Approximately 150 feet downstream of Bennett Road	*254	*252
			Approximately 2,350 feet upstream of Bennett Road	*263	*262
			Approximately 400 feet downstream of North Avenue	*271	*269
			Approximately 500 feet downstream of Collamer Road	*276	*274
			Downstream side of Parma-Hamlin Town Line Road	*279	*277
		Otis Creek	Approximately 158 feet upstream of confluence with Salmon Creek.	*277	*274
			Approximately 53 feet downstream of Hill Road	*278	*275
			Approximately 53 feet upstream of Hill Road	*279	*277
			Approximately 53 feet downstream of Private Drive	*279	*277
			Approximately 160 feet upstream of Private Drive	*281	*279
			Approximately 1,640 feet downstream of the corporate limits.	*285	*284
Maps are available for inspection at 1300 Hilton-Parma Corner Road, Hilton, New York.					
Send comments to The Honorable Thomas Younker, Supervisor of the Town of Parma, 1300 Hilton-Parma Corners Road, Hilton, New York 14468.					
North Carolina	City of Wilmington, New Hanover County.	Burnt Mill Creek	Just downstream of Colonial Drive	*13	*13
			Just upstream of Mercer Avenue	*17	*16
			About 1,700 feet upstream of Mercer Avenue	*20	*20

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the Engineering Department, P.O. Box 1810, Wilmington, North Carolina. Send comments to The Honorable Barry Williams, Mayor, City of Wilmington, P.O. Box 1810, Wilmington, North Carolina 28402.					
Oregon	Clatsop County	Columbia River	Confluence of Walluski and Young's Rivers to the confluence of Walluski and Little Walluski Rivers.	None	*9
Maps are available for inspection at the Clatsop County Planning Department, P.O. Box 179, Astoria, Oregon. Send comments to Mr. Roger A. Berg, Chairman, Clatsop County Planning Department, P.O. Box 179, Astoria, Oregon 97103.					
Oregon	Marion County (Unincorporated Areas).	Willamette River	1,500 feet north of the intersection of Butteville-Fargo Road and River Road, along River Road.	*95	*94
			1,600 feet upstream from State Highway 219 bridge	None	*98
			1,000 feet downstream of the Marion-Polk-Yamhill County boundary intersection.	None	*116
		North Santiam River	3,400 feet downstream from State Highway 226 bridge	None	*607
			At State Highway 226 bridge	None	*619
			7,600 feet upstream from State Highway 226 bridge	None	*645
		Mill Creek	500 feet upstream of State Highway bridge (in the City of Salem).	None	*185
			300 feet downstream from Interstate Highway 5 bridge	*220	*222
			At City of Turner corporate limits	*267	*267
			500 feet west of the intersection of Boone Road SE and the Southern Pacific Railroad, along Boone Road SE.	None	#1
		Claggett Creek	500 feet downstream from Burlington Northern Railroad bridge.	None	*133
			600 feet upstream from Fisher Road NE bridge	None	*167
		Battle Creek	At Sunnyside Road SE bridge	None	*402
			50 feet upstream from Reese Hill Road SE bridge	None	*525
			At Liberty Road SE bridge	None	*536
		Powell Creek	At City of Salem corporate limits	None	*393
			At Sunnyside Road SE bridge	None	*398
		Middle Fork Pringle Creek	1,000 feet downstream from Southern Pacific Railroad bridge.	None	*218
			At Southern Pacific Railroad bridge	None	*226
		East Fork Pringle Creek	1,100 feet downstream from Interstate Highway 5 bridge.	None	*219
			At Interstate Highway 5 bridge	None	*226
Send comments to The Honorable Gary Heer, Chairman, Marion County Board of Commissioners, Marion County Courthouse, Salem, Oregon 97309. Maps are available for review at the Marion County Planning Department, 220 High Street, Salem, Oregon 97309.					
Texas	Montgomery County	Panther Branch	Upstream side of Woodlands Parkway	*125	*128
			Approximately 1,750 feet upstream of Research Forest Drive.	*134	*133
Maps available for inspection at 326½ North Main, Conroe, Texas. Send comments to The Honorable Jimmie C. Edwards, III, Montgomery County Judge, Montgomery County Courthouse, 322 North Main, Conroe, Texas 77301.					
Texas	Richmond, City, Fort Bend County.	Brazos River	At downstream corporate limits	*83	*80
			At upstream corporate limits	*91	*88
Maps are available for inspection at 402 Morton, Richmond, Texas. Send comments to The Honorable Hilmar Moore, Mayor of the City of Richmond, Fort Bend County, 402 Morton, Richmond, Texas 77469.					
Wisconsin	Unincorporated Areas of Dane County.	East Branch Starkweather Creek	About 1,400 feet upstream of mouth	*851	*849
			About 3,200 feet downstream of Lien Road	*852	*852
			About 1,600 feet downstream of Lien Road	*852	*853
			Just downstream of Chicago, Milwaukee, and Pacific Railroad.	NONE	*868
		West Branch Starkweather Creek	About 1,700 feet downstream of U.S. Highway 51	NONE	*858
			Just downstream of Hanson Road	NONE	*864
		Wisconsin River	About 1.06 miles downstream of the intersection of the Dane, Sauk, and Iowa County boundaries.	*732	*730
			About 600 feet downstream of northern county boundary.	*749	*749
		Portage Road Tributary	Just upstream of City of Madison Corporate Limits (About 1,100 feet downstream of Portage Road).	*865	*865
			Just downstream of I90-94 (About 1,500 feet upstream of Hayes Road).	NONE	*892
Maps are available for inspection at the Platt Survey Office, Room 116, City County Building, Madison, Wisconsin. Send comments to The Honorable Jonathan Barry, County Executive, Dane County Courthouse, 210 Monona, Room 421, Madison, Wisconsin 53709.					

Issued: March 11, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-6061 Filed 3-19-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 86-496]

Satellite Communication Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: This document corrects the deadline date for filing initial comments in the Proposed Rule in this proceeding concerning the Satellite Communication Services.

DATES: Comments on the Proposed Rule are now due April 27, 1987. The reply comment date remains unchanged.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Gorman, (202) 632-1624.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on March 2, 1987, 52 FR 6175.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 87-6092 Filed 3-19-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-39, RM-5521]

Radio Broadcasting Services; Glen Arbor, Michigan

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This document requests comments on a petition filed by Michael E. Bradford, proposing the allocation of FM Channel 251A to Glen Arbor, Michigan, as that community's second FM broadcast service. Canadian concurrence is required for the allocation of this channel.

DATES: Comments must be filed on or before May 4, 1987, and reply comments on or before May 19, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael E. Bradford, 1873 Crouch Road, Jackson, Michigan 49201.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-39, adopted February 10, 1987, and released March 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-6094 Filed 3-19-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 54
Friday, March 20, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87-014]

Availability of a Final Environmental Impact Statement on the Rangeland Grasshopper Cooperative Management Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We have prepared and made available to the public the Final Environmental Impact Statement (FEIS) on the Rangeland Grasshopper Cooperative Management Program (USDA–APHIS–FEIS–87–01). We sent the FEIS to the Environmental Protection Agency (EPA) on March 11, 1987.

ADDRESSES: Request for a copy of the FEIS should be addressed to: Charles H. Bare, Staff Officer, Field Operations Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Copies of the FEIS are available by mail from location designated by an asterisk.

Copies may be inspected at any of the following locations:

Plant Protection and Quarantine,* Animal and Plant Health Inspection Service, U.S. Department o Agriculture, Room 302 E, Administration Building, 14th & Independence Avenue SW., Washington, DC 20250

Plant Protection and Quarantine,* Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 7100 West 44th Avenue, Suite 102,Wheat Ridge, CO 80033

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 83 Scripps Drive, Second Floor, Sacramento, CA 95825

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 2100 Boca Chica Boulevard, Suite 400, Brownsville, TX 78521

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

We published a notice in the **Federal Register** on November 7, 1986 (51 FR 40470) of the availability of the Draft Environmental Impact Statement (DEIS) on the Rangeland Grasshopper Cooperative Management Program.

The DEIS addressed the environmental impact of alternative cooperative control measures for grasshoppers and Mormon crickets on Western rangeland. Each alternative control measure which was considered in detail examined the potential impact on soils, vegetables, wildlife, water quality and aquatic systems, human health and water safety, air quality, historic and cultural resources, visual resources, and noise levels.

In the notice published in the **Federal Register** on November 7, 1986, we announced the availability of the DEIS for review, and requested comments on it. Although the comment period closed December 22, 1986, in preparing the FEIS, we considered and responded to all comments received.

The FEIS considered and discusses the environmental impacts of several management alternatives and provides the rationale for the perferred alternative, integrated pest management.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, we transmitted the FEIS to EPA on March 11, 1987.

Copies of the FEIS are available upon request. (See **"ADDRESSES".**)

Done in Washington, DC, this 19th day of March 1987.

Charles W. Hall,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–6242 Filed 3–19–87; 9:55 am]

BILLING CODE 3410–34–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Nebraska

The certification of the Statewide filing system of Nebraska is hereby amended at the request of Allen J. Beermann, Secretary of State, to include safflower and millet in the farm products covered by the system.

The central filing system was previously certified, pursuant to section 1324 of the Food Security Act of 1985, for specified farm products produced in that State (51 FR 45493, December 19, 1986).

This amendment is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: March 17, 1987.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Adminstration.

[FR Doc. 87–6111 Filed 3–19–87; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Monthly Cold Storage Report

Form Number: Agency—NOAA 88–16; OMB—0648–0015

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 340 respondents; 1,700 reporting hours

Needs and Uses: Cold storage warehouses are requested to make monthly reports on their quantity of fish and shellfish held in cold storage in the U.S. The data collected are used by the National Marine Fisheries Service and the Regional Fishery Management Councils' economists, the Departments of State and Agriculture, and local governments for research on seasonal demands for fishery products, and the changes of supply over time. The data is also used by industry for purchase, sales, and price planning.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Monthly
Respondent's Obligation: Voluntary
OMB Desk Officer: Donald Arbuckle, 395–7340

Agency: National Oceanic and Atmospheric Administration
Title: Pacific Billfish Angler Survey
Form Number: Agency—NOAA–88–10; OMB—0648–0020
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,143 respondents; 150 reporting hours
Needs and Uses: Recreational fishermen are requested to report billfish catches in the Pacific. The information is used to track the annual catch rate trends and to monitor the effects of foreign fishing on recreational catches.
Affected Public: Individuals
Frequency: Annually
OMB Desk Officer: Don Arbuckle, 395–7340

Agency: National Oceanic and Atmospheric Administration
Title: Volunteer Severe Weather Observer Reports
Form Number: Agency—NOAA 86–512; OMB—0648–0032
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 100 respondents; 53 reporting hours
Needs and Uses: Volunteer weather observers submit data on severe storms to the National Severe Storms Laboratory. The data obtained is used by atmospheric scientists both within and outside the agency in the conduct of basic and applied research on severe storms.
Affected Public: Individuals
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle, 395–7340

Agency: National Oceanic and Atmospheric Administration
Title: Deep Seabed Mining Regulations for Exploration Licenses
Form Number: Agency—N/A; OMB—0648–0145
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 4 respondents; 80 reporting hours
Needs and Uses: The Deep Seabed Hard Minerals Resources Act calls for NOAA to issue such regulations as appropriate to accomplish exploration and commercial recovery of deep seabed hard mineral resources. The information requirements imposed on the public through the regulations are for the purpose of issuing and monitoring exploration licenses as mandated by the Act.
Affected Public: Businesses or other for-profit institutions
Frequency: Annually; on occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Donald Arbuckle, 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6228, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Donald Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: March 16, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–6112 Filed 3–19–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–337–602]

Antidumping Duty Order; Standard Carnations from Chile

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the United States Department of Commerce determined that standard carnations from Chile were being sold at less than fair value within the meaning of the antidumping duty law.

In a separate investigation, the United States International Trade Commission (the ITC) determined that standard carnations from Chile are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of standard carnations from Chile made on or after November 3, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register,** will be liable for the possible assessment of antidumping duties, except those from Flora del Sur Ltda. (formally Jorge Puiggros Mazuela). Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: March 20, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or John Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1756 or (202) 377–3965.

SUPPLEMENTARY INFORMATION: The products under investigation are standard carnations currently provided for in item 192.21 of the *Tariff Schedules of the United States* (TSUS).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C 1673b), on November 3, 1986, the Department published its preliminary determination that there was reason to believe or suspect that standard carnations were being sold at less than fair value (51 FR 39885). On February 2, 1987, the Department published its final determination that these imports were being sold at less than fair value (52 FR 3152).

On March 5, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry.

Suspension of Liquidation

In accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of standard carnations from Chile. These antidumping duties will be assessed on all unliquidated entries of standard carnations entered, or withdrawn from

warehouse, for consumption on or after November 3, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (51 FR 39885) except for standard carnations produced by Flores del Sur Ltda. (formerly Jorge Puiggros Mazuela).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margins (percent)
Agricola Longotoma	28.78
All other manufacturers/producers/exporters	28.78

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on standard carnations, we found export subsidies (52 FR 3313). Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. Thus, the amount of the export subsidies will be subtracted for deposit purposes from the dumping margins.

This determination constitutes an antidumping order with respect to standard carnations from Chile, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

March 12, 1987.

[FR Doc. 87-6113 Filed 3-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On November 7, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers eight manufacturers and/or exporters of this merchandise and generally the period April 1, 1981 through March 31, 1983.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results for certain firms from those presented in our preliminary results of review.

EFFECTIVE DATE: March 20, 1987.

FOR FURTHER INFORMATION CONTACT: Eugenio Parisi or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 40474) the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We began this review under our old regulations. After the promulgation of our new regulations, the petitioners, Zenith Electronics Corporation ("Zenith") and the International Brotherhood of Electrical Workers, Independent Radionic Workers of America, the International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, and the Industrial Union Department, AFL-CIO ("the Unions"), and two respondents, Sanyo Electric Co. ("Sanyo") and Funai Electric Co. ("Funai"), requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, and include but are not limited to projection televisions, receiver monitors, and kits (containing all the parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units (combinations of television receivers with other electrical entertainment components such as tape recorders, radio receivers, etc.), and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. The review covers eight manufacturers and/or exporters of Japanese television receivers, monochrome and color, and generally the period April 1, 1981 through March 31, 1983. Because we were prevented by a court order from completing the reviews of Toshiba and NEC for the fourth period, we will publish those final results at a later date.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from one of the petitioners, Zenith, and the eight respondents. (We received additional comments from the respondents concerning mathematical or clerical errors. We have corrected such errors but have not addressed them specifically in this notice.)

Analysis of Petitioner's Comments

Comment 1: Zenith argues that the Department should have implemented the ruling of the Court of International Trade ("CIT") in *Zenith* v. *United States* (April 24, 1986) by adding to United States price ("USP") the internal taxes rebated or forgiven upon the exportation of the merchandise to the extent that those taxes could have been "passed through" and included in the price of televisions sold in Japan.

Department's Position: As directed by the CIT in *Zenith*, we are now attempting to formulate a methodology for calculating the amount of indirect taxes passed through in the home market, which should then be added to United States price. Because the remand concerning the second administrative review of this finding is still before the CIT, we followed our standard practice and, for the reasons stated in our final

determination of sales at less than fair value on grand and upright pianos from Korea (50 FR 37561 (1985), we have subtracted the full amount of these taxes from foreign market value ("FMV").

Comment 2: Zenith argues that the Department failed to deduct from exporter's sales price ("ESP") certain export-related expenses incurred in Japan.

Department's Position: We agree. Since these export selling expenses which were incurred for marketing merchandise sold in the United States were not identified and quantified, we used as best information available the amounts deducted in the last review. We have included these expenses as part of indirect selling expenses in the ESP transactions.

Comment 3: Zenith argues that the Department improperly failed to deduct antidumping legal expenses from ESP.

Department's Position: It is our practice, as stated in our *Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change* (November 1985), not to consider legal fees paid in connection with litigation resulting from an earlier antidumping investigation to be an expense related to sales made in the period being reviewed. (*See* also the final results of sales at less than fair value on *Certain Steel Pipes and Tubes from Japan*, 48 FR 1206, April 29, 1983.) We view legal fees incurred at the administrative stage of an antidumping proceeding as meriting similar treatment since they are incurred in defendIng against an allegation of dumping. As such, they are not expenses incurred in selling merchandise in the United States.

Comment 4: Zenith argues that the Department erred in its treatment of sample receivers for Sanyo, Hitachi, and Toshiba. Zenith contends that whenever merchandise subject to an antidumping finding is given away at a zero price, including samples, a margin must be calculated for the transaction.

Department's Position: We agree with Zenith that goods entered for consumption are subject to an antidumping finding whenever ownership transfers from the exporter of such goods. However, our records show that for these sample receivers (with the exception of forty Hitachi units for which we have calculated margins) transfer of ownership never occurred. In these cases the samples were used for engineering or testing purposes and later returned to the company and destroyed.

Comment 5: Zenith argues that in determining the viability of the home market the Department should test the quantity of home market sales as a percentage of all sales to all markets, not just as a percentage of third-country sales.

Department's Position: We disagree. Section 773 of the Tariff Act requires that, in determining whether the home market is viable, the quantity of home market sales is to be compared to the quantity of sales for exportation to countries other than the United States. Also, section 353.4(a) of the Commerce Regulations provides that if the quantity of home market sales accounts for 5 percent or above of third-country sales, home market sales are adequate to be used as the basis for foreign market value.

Comment 6: Zenith argues that the Department's application of the 0.5 percent *de minimis* "rule" is arbitrary and unlawful.

Department's Position: In *Carlisle Tire and Rubber Co.* v. *United States*, C.I.T., Slip Op. 86–45 (April 29, 1986), the CIT held that the Department must either promulgate a rule in accordance with the Administrative Procedures Act establishing 0.5 percent as the *de minimis* standard for its determinations, or must explain the basis for each individual determination in which it decides that a weighted-average dumping margin below 0.5 percent is *de minimis*. The Department has elected the first of the two options given it by the Court, and has promulgated a proposed rule establishing 0.5 percent as the *de minimis* standard for all antidumping and countervailing duty determinations (51 FR 35495–35531, October 6, 1986). In accordance with this proposed rule, we have not required a cash deposit for Hitachi.

Comment 7: Zenith argues that the Department's policy of instructing Customs to collect cash deposits for future entries on the basis of a weighted-average percentage of entered value understates the amounts that should be collected, because that percentage is, in fact, based on USP which will always be higher than entered values. Since that percentage will subsequently be applied to the lower entered value, it will understate the true estimated duty.

Department's Position: At the time of entry of any shipment USP has yet to be determined. Since cash deposits of estimated antidumping duties are required at that time, we instruct Customs to require such cash deposits expressed as a percentage of the only information available, which is entered value.

Comment 8: Zenith argues that the Department failed to take into account the average age of each home market account payable, to apply the respondents' short-term interest rate to such average ages, and to offset the result against the respective claimed credit expense.

Department's Position: We disagree. Since there is no relationship between accounts payable and credit expenses incurred on specific sales, we made no adjustments for imputed income earned on accounts payable.

Comment 9: Zenith notes that NEC omitted three sales from its computer printout of third period ESP sales.

Department's Position: We agree and have corrected our calculations to include these sales.

Comment 10: Zenith contends that NEC overstated the amount of commodity taxes paid for each model by overstating the total quantities sold.

Department's Position: To compute the amount of commodity taxes paid we used the quantities and sales prices, net of freight and packing, from NEC to its related sales companies. For price comparison purposes, we used the prices and quantities sold by NEC's sales companies to unrelated dealers.

Comment 11: Zenith argues that the Department should delete from NEC's home market sales data base certain home market sales at abnormally low prices because NEC could not provide proper documentation at verification to substantiate them.

Department's Position: We agree and have not included these sales in our FMV calculations.

Comment 12: Zenith urges the Department to deduct from USP the actual amount of estimated antidumping duties paid by the respondents, just as it deducted the antidumping bond premium from Sanyo's ESP transactions.

Department's Position: In the preliminary results we incorrectly deducted the antidumping duty bond premium from Sanyo's ESP sales. We do not consider either estimated antidumping duties paid or antidumping bond premiums to be expenses related to the sales being reviewed and, therefore, they should not be deducted from USP. We have corrected our calculations for Sanyo accordingly.

Comment 13: Zenith notes that the Department incorrectly omitted the deduction for co-op advertising from Sanyo's ESP sales in the third period.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 14: Zenith notes that the Department should use the verified number of days as the average age of accounts receivables for Sanyo in its home market credit expense calculation for the third period.

Department's Position: We agree and have corrected our calculations accordingly. *See* our position on Comment 41.

Comment 15: Zenith argues that the Department incorrectly deducted from Sanyo's FMV in the fourth period a greater amount for total discounts than that reported in Sanyo's questionnaire response.

Department's Position: In the fourth period, because we used prices from Sanyo's related distributors to dealers, we used the average amount of the discounts paid by the distributors to the dealers.

Comment 16: Zenith argues that we incorrectly allowed Sanyo's Rose Bonus (volume rebate) as a circumstance-of-sale adjustment, and that we should allow it as an indirectly-related selling expense because it was granted on the purchase of all products, and not just televisions. Zenith further argues that, because Sanyo could not satisfactorily demonstrate how much of this expense was passed through to dealers because records had been destroyed, we should not allow this as a directly-related selling expense.

Department's Position: We consider that portion of the Rose Bonus allocated to televisions to be a directly-related selling expense. *See* also our position on Comment 45.

Comment 17: Zenith argues that the Department should not accept Sanyo's method of calculating home market sales promotion and advertising expenses incurred in the third period. Sanyo allocated these expenses over all sales of the comparison models during the third *and* fourth periods.

Department's Position: We agree and have reallocated these expenses only over sales of the comparison models in the third period. *See* our position on Comment 42.

Comment 18: Zenith argues that the Department incorrectly omitted four sales from Sanyo's ESP calculations for the third period.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 19: Zenith argues that the Department should use constructed value as the basis for FMV for Mitsubishi for the third period because there is no evidence that Mitsubishi's home market was viable.

Department's Position: We compared the quantity of Mitsubishi's home market sales to the quantity of its third-country sales, and we determine that Mitsubishi's home market sales are sufficient to be used as a basis for FMV.

Comment 20: Zenith argues that the Department should deny Mitsubishi's claim for an installment allowance expense in the home market because it is considered an intra-corporate financing of credit sales.

Department's Position: We agree that this claimed adjustment paid to Mitsubishi's related credit company is an intracorporate transfer of funds. Therefore, we have disallowed this claim and have corrected our calculations accordingly.

Comment 21: Zenith argues that the Department should have allowed Mitsubishi's home market warranty parts cost as an indirect selling expense because in its questionnaire response Mitsubishi stated that it could not identify parts used for repair on each specific model.

Department's Position: We disagree. We verified that Mitsubishi incurred these parts costs and that they were directly related to sales of the models in question.

Comment 22: Zenith argues that the Department should disallow a portion of Mitsubishi's claimed sales promotion expense because we could not verify it.

Department's Position: We agree and have disallowed that portion of the claimed sales promotion expense for which Mitsubishi failed to provide appropriate verification documentation.

Comment 23: Zenith argues that the Department should have used Mitsubishi's lower home market packing costs instead of calculating a simple average, due to Mitsubishi's failure to provide dates of sale and its untimely submission of packing data.

Department's Position: We agree. As best information available we deducted the lower of Mitsubishi's two claimed home market packing costs and added the higher of two claimed U.S. packing costs. *See* our position on Comment 49.

Comment 24: Zenith argues that the Department must include in its calculations certain U.S. sales by Mitsubishi in both periods.

Department's Position: We agree and have included these sales in our calculations. Mitsubishi did not provide FMV data for these models, which were imported in the previous review period and sold during this review period. Therefore, as best information available we used the FMV for the applicable comparison models from the previous review.

Analysis of Respondent's Comments

Comment 25: General, Sanyo, NEC, and Mitsubishi argue that the Department should have implemented the CIT's ruling in *Zenith* by adding to USP the amount of internal taxes forgiven or rebated upon the exportation of the merchandise. This would require the Department to add to USP an amount equal to the Japanese commodity tax that would have been imposed by the Japanese government upon the exported merchandise were it not exported.

Department's Position: See our position on Comment 1.

Comment 26: Otake notes that in the preliminary results notice we incorrectly stated that FMV was based on either home market price or constructed value. Otake notes that, in fact, only third-country sales were used as the basis for FMV.

Department's Position: We agree.

Comment 27: Hitachi and Toshiba note that the Department had already published preliminary results for them for the period April 1, 1981 through March 31, 1982, indicating only non-commercial shipments (48 FR 44100, September 27, 1983), and they request the Department to make those results final. Also, Hitachi claims that, since it had three consecutive years of only non-commercial shipments, the Department should publish a final revocation for Hitachi.

Department's Position: In the September 27, 1983 preliminary results notice Toshiba had no margins and Hitachi had a 0.16 percent margin for non-commercial shipments. We are using the weighted-average margin found in that review for those two firms in this review. For Hitachi, in accordance with the CIT's decision in *Freeport Minerals Co.* vs. *United States* (CAFC, 84–1591, November 7, 1985), we intend to review, and to provide the petitioners the opportunity to comment on, U.S. sales during the most recent review period before making a final revocation determination. To qualify for revocation, not only must a firm have two or more years of fair value sales, but we must be satisfied that there is no likelihood of resumption of sales at less than fair value. This is an additional reason for examining a firm's U.S. selling practices subsequent to a tentative revocation which is several years old.

Comment 28: Sanyo, Mitsubishi, NEC, and General argue that in the settlement agreement signed on April 28, 1980 by the Department and 22 importers, the Department agreed to ascertain statutory FMV precisely as it had in the past, that is, to use "traditional methodology" in calculating home market advertising, sales promotion, and warranty expenses, and that the Department is obligated thereby to use the so-called "traditional methodology" in this review.

Department's Position: We disagree with these respondents' interpretation of the phrase "traditional methodology." Paragraph 6(h) of the settlement agreement states that "traditional methodology" includes "the method under which entries under T.D. 71–76 were assessed and liquidated prior to March 31, 1978, as altered by any changes in that method reflective of applicable amendments to the Antidumping Act, or the regulations and practices thereunder." Thus, for these respondents, as for respondents in all other proceedings before the Department, the Department will use the "traditional methodology" as altered by any changes in applicable *regulations and practices,* when they occur.

Further, the phrase "traditional methodology" is limited to the calculation of foreign market values based upon information and data supplied by Japanese respondents. It precludes future use of the "commodity tax" method in calculating FMV.

In the final results of the second administrative review we stated that in future reviews we would apply a new methodology to calculate advertising and sales promotion expenses (50 FR 24282, June 10, 1985). For the method of adjusting for warranty expenses, *see* pages 45 and 46 of the *Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change* (November 1985).

Comment 29: General and NEC argue that the Department should have used a six-month weighted-average home market price to calculate FMV.

Department's Position: We disagree. Our policy normally is to use a monthly weighted-average FMV for comparison to individual U.S. transactions. Neither General nor NEC proffered any reason to depart from that normal policy in this review.

Comment 30: Sanyo argues that projection televisions do not fall within the class or kind of merchandise subject to the finding and urges the Department to rule that projection television systems are outside the scope of the finding.

Department's Position: We reaffirm our previous decision in the second review that projection televisions are within the scope of this finding.

Comment 31: Sanyo argues that for the fourth period the Department erred in basing FMV on prices from Sanyo's related and unrelated distributors, and should base FMV instead on prices from Sanyo to its distributors.

Department's Position: We disagree. Of all sales to distributors in the fourth period, Sanyo had only one sale of one unit to an unrelated distributor at a price equal to its prices to related distributors. That sale was less than one percent of all such sales. We do not consider this sufficient to determine that sales to related distributors were made at arm's length and, accordingly, we based FMV on sales made by the related distributors to unrelated dealers.

Comment 32: Sanyo argues that, if the Department persists in basing FMV on distributors' selling prices to dealers, it must adjust these prices to account for differences in levels of trade in the two markets.

Department's Position: Because Sanyo did not demonstrate what portion of the distributors' selling expenses were solely related to their sales of comparison models, we disallowed these expenses as differences in levels of trade. However, as part of the ESP offset adjustment, we allowed a portion of these and of Sanyo's comparable expenses, but not more than the ESP offset amount, as indirectly-related home market selling expenses.

Comment 33: Sanyo argues that if the Department uses prices from Sanyo's related distributors as the basis for FMV, the Department cannot apply such a decision retroactively to the fourth period.

Department's Position: We did not apply this decision retroactively, since the Department's decision to use prices from Sanyo's related distributors is consistent with § 353.22 of the Commerce Regulations, which have been in effect since 1980. We note that, as we have stated elsewhere, we need not apply changes in methodology only on a 'prospective' basis (*See Color Television Receivers from Korea* (49 FR 7620, March 1, 1984)).

Comment 34: Sanyo contends that the Department erred by excluding the labor cost portion of home market warranty expenses as directly-related expenses, but at the same time deducting these expenses from USP. Sanyo argues that the Department must include these costs in its calculations of both USP and FMV.

Department's Position: Because for its ESP sales Sanyo did not identify or quantify which portions of its claimed U.S. warranty expenses were attributable to specific labor and parts costs, we considered the full warranty expenses as directly-related selling expenses and adjusted ESP accordingly. From foreign market value we deducted only those portions of claimed warranty expenses which Sanyo demonstrated were directly related to sales of comparison model televisions. See our position on Comment 40.

Comment 35: Sanyo argues that the Department should use Sanyo's actual borrowing rate for U.S. credit, instead of the U.S. prime rate, and apply it against the unit price less the sales allowances and volume rebates.

Department's Position: We disagree in part. Since, rather than its actual borrowing rate Sanyo furnished simply an average credit expense per unit, we calculated Sanyo's U.S. credit costs on a sale-by-sale basis using the average U.S. prime rate for the review period as best information available. However, we agree with Sanyo that we should apply the U.S. average prime rate to the unit price less the sales allowances and volume rebates, and have changed our calculations accordingly.

Comment 36: Sanyo notes that in its USP calculations the Department incorrectly calculated the adjustments for commissions, volume rebates, and co-op advertising expenses as percentages of the gross unit price; the Department should have calculated these expenses as percentages of the gross unit price less sales allowances and volume rebates.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 37: Sanyo argues that the Department should not have deducted the highest fees for banking charges, brokerage expenses, antidumping bond premiums, import duty, marine insurance premiums, ocean freight, drayage, and Japanese inland freight expenses. Sanyo asserts that we should use either a weighted-average of each of these expenses or recalculate these expenses by using the FIFO (first-in first-out) method.

Department's Position: Although we prefer actual movement expenses to be furnished on a sale-by-sale basis, for this review Sanyo was able to identify these expenses only on an entry-by-entry basis. Since this is a reasonably accurate alternative (except for drayage and freight these charges are generally either a fixed percentage of value or uniform, flat fees), we deducted the weighted average amount for each of these expenses. As for the antidumping bond premiums, *see* our position on Comment 12.

Comment 38: Sanyo argues that the Department erred in imputing interest expenses for U.S. sales from the date of export to the date of sale.

Department's Position: We disagree. We impute an interest expense for the period between the date of shipment from Japan and the date of sale in the U.S. because the opportunity cost of holding inventory is a real expense which Sanyo could not identify in its pool of claimed interest expenses.

Comment 39: Sanyo notes that in its price comparisons for the fourth period

the Department mistakenly used U.S. sales in the third period.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 40: Sanyo argues that the Department incorrectly disallowed the "In-warranty Repair Charges" portion of its claimed home market warranty expenses. Because these labor costs are incurred by a contractor, they are variable costs which, as directly-related selling expenses, we should deduct from FMV pursuant to section 353.15 of the Commerce Regulations.

Department's Position: We disagree. Because Sanyo's service contractor is related to Sanyo, we disallowed the labor portion of the warranty claim as a directly-related selling expense, but allowed it as an indirectly-related selling expense. Also, we recalculated warranty expenses for the fourth period by allocating them to the number of units sold by the distributors.

Comment 41: Sanyo contends that the Department must use Sanyo's verified actual interest rate in calculating home market credit expenses.

Department's Position: We used Sanyo's verified actual short-term interest rate and average number of days of accounts receivable to calculate the sale-by-sale home market credit costs. We also recalculated imputed interest costs for Sanyo's U.S. sales to its U.S. subsidiary using these same actual rates.

Comment 42: Sanyo contends that the Department should allow all of its claimed adjustment for advertising expenses for both periods.

Department's Position: We reexamined Sanyo's advertising claim in the original submission, the sample submissions, and in the verification report. At verification we found that Sanyo incurred printing costs for a sales brochure for the comparison model sold in the third period, and production costs of a catalog, but that Sanyo allocated these costs over the sales quantities of the comparison model for both the third and fourth periods. Though we reallocated both of these costs over the sales quantity of the comparison model only in the third period because this cost was incurred during the third period, we did not allow this reallocated amount as an adjustment in the third period. Instead, for the reasons discussed below, we adjusted the third-period FMV for the originally claimed amount because it was the lower figure. For the fourth-period FMV we deducted the verified amount that we recalculated. We also adjusted the fourth-period FMV for verified sales promotion expenses.

For advertising, sales promotion, and warranty adjustments we proceeded as follows in this review: When a respondent claimed a larger amount than the sample we verified, we allowed the verified sample amount. When the claimed amount was equal to or less than the verified sample amount, we allowed the claimed amount. (We did not use the verified sample amounts in these instances because the respondents should not benefit from their unwillingness to provide complete responses.) Finally, when we were unable to verify the sample amount, we denied the claimed amount in its entirety.

Comment 43: Sanyo argues that the Department incorrectly calculated its ESP offset for the third period.

Department's Position: We agree and have allowed the amount claimed by Sanyo.

Comment 44: Sanyo notes that the Department used an incorrect number of units sold as the denominator in its computation of delivery costs.

Department's Position: We agree and have corrected our calculations by using Sanyo's claimed number of units sold.

Comment 45: Sanyo argues that for the fourth review the Department incorrectly deducted the Rose Bonus paid by Sanyo to its distributors, instead of deducting the Rose Bonus paid by its distributors to unrelated dealers.

Department's Position: We agree. The Rose Bonus is a volume rebate granted on the basis of the value of all products purchased. For the third period, since we used Sanyo's prices to its distributors for comparison purposes, we allocated the Rose Bonus amount paid by Sanyo to its distributors over the sales value of all comparison models. For the fourth period we accepted Sanyo's calculation methodology as reasonable and, since we used the distributors' prices to their dealers for comparison purposes, we allowed the claimed amounts that the distributors paid to each dealer.

Comment 46: Sanyo argues that if the Department decides not to grant a level-of-trade adjustment, the Department should allow certain home market indirect selling expenses as an ESP offset in the fourth period; specifically, the selling expenses incurred by Sanyo's distributors.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 47: Mitsubishi argues that for ESP sales the Department incorrectly disallowed certain home market indirect selling expenses, incurred by the Consumer Products Group of Mitsubishi's company headquarters and by its Kyoto factory, and that we deducted an incorrect amount of indirect selling expenses incurred by Mitsubishi's sales offices.

Department's Position: We agree that we preliminarily deducted an incorrect amount for indirect selling expenses incurred by the sales offices in the third period. In reviewing our calculations we discovered a clerical error and reduced the amount claimed for the ESP offset. However, we affirm our disallowance of certain home market indirect selling expenses. Mitsubishi did not identify or quantify the claimed expenses. Mitsubishi provided a total figure for all indirect selling expenses incurred by these divisions and claimed them as selling, general, and administrative expenses. We allowed only the expenses incurred by the sales offices and the sales office at the company's headquarters (Administration Department) and recalculated the ESP offset to include labor warranty expenses.

Comment 48: Mitsubishi contests the Department's characterization of its sales data format as inadequate, noting that we never requested Mitsubishi to modify or resubmit the sales data.

Department's Position: We disagree. On July 14, 1986, we asked Mitsubishi both for additional sales data for the fourth period and for computer tapes listing individual U.S. sale dates. The only information we ever received was total quantities of televisions sold by customer in each review period, which was inadequate.

Comment 49: Mitsubishi argues that, for currency conversion purposes, rather than the highest exchange rate the Department should use an average exchange rate for each period.

Department's Position: As previously noted, Mitsubishi did not provide individual U.S. sale dates. We will not allow a respondent to benefit from not providing needed information, such as U.S. sale dates. As best information available, therefore, we used the highest of various exchange rates applicable in a review period.

Comment 50: Mitsubishi argues that the Department improperly chose the most adverse semi-annual U.S. packing expense figure when it should have used an average of those two figures, as it did for home market packing.

Department's Position: As best information available we deducted the lower of the two home market packing expense figures and added the higher of the two U.S. packing expense figures, for the same reason noted in our position on Comment 49.

Comment 51: Mitsubishi contends that the Department erred in using the highest C.I.F. price to calculate imputed interest expenses; instead, we should use a weighted-average C.I.F. price to calculate these expenses.

Department's Position: Because Mitsubishi did not provide on computer tape the C.I.F. price for each U.S. sale, we were unable to identify individual C.I.F. prices; therefore, for the same reasons noted in our position on Comment 49, we used the highest C.I.F. price to calculate these expenses as best information available.

Comment 52: Mitsubishi argues that, if the Department adjusts ESP for imputed interest expenses, we should also adjust FMV for those expenses.

Department's Position: We disagree. As we stated elsewhere: "We disagree that we are inconsistent in not adjusting for interest expenses incurred during the pre-sale inventory period in the home market while reducing United States price by the interest expense incurred from date of shipment to date of sale. From both United States price and foreign market value we deduct the cost for the period from date of shipment from warehouse in the home market to date of payment from the unrelated customer." (*Color Television Receivers* 49 FR 50420, December 28, 1984.)

Comment 53: Mitsubishi argues that the Department incorrectly used the lower of Mitsubishi's claimed home market sales promotion, advertising, and warranty expenses, and that we erroneously denied the related service company's labor expense as a directly-related selling expense.

Department's Position: We allowed the lower of the claimed amounts for the same reasons as stated in our position on Comment 42. We allowed the labor portion of the claimed warranty expense as an indirect selling expense and included it in the ESP offset.

Comment 54: Mitsubishi argues that the Department improperly used the higher of two home market selling prices to calculate FMV for the fourth review period and that the Department should use a weighted-average price for this period.

Department's Position: Mitsubishi provided two semi-annual home market prices for the period. We were unable to calculate a weighted-average price for the period because Mitsubishi did not provide monthly sales quantities for each price. For the same reasons noted in our position on Comment 49, as best information available we used the higher of the two prices.

Comment 55: Mitsubishi contends that the Department should have used 365 days, rather than 360 days, in calculating U.S. credit expenses.

Department's Position: We agree and have changed our calculations accordingly.

Comment 56: Mitsubishi contends that the Department should have granted Mitsubishi a tentative revocation concurrently with the issuance of the preliminary results of this review.

Department's Position: Our final calculations show that the margin for Mitsubishi in the fourth period is more than *de minimis*. Therefore, we have no basis on which to grant Mitsubishi a tentative revocation.

Comment 57: General argues that the Department failed to offset U.S. commissions with indirect selling expenses incurred in the home market.

Department's Position: In accordance with § 353.15(c) of the Commerce Regulations, we allowed the home market indirect selling expenses to offset U.S. commissions and other home market indirect selling expenses as an ESP offset.

Comment 58: General argues that in calculating the ESP offset the Department erroneously disallowed home market inventory warehousing and insurance expenses as indirect selling expenses.

Department's Position: We agree and have changed our calculations accordingly.

Comment 59: General argues that the Department incorrectly disallowed claimed circumstance-of-sale adjustments for price reconciliation and overbilling.

Department's Position: We disagree. These adjustments are cash rebates and discounts which are offered only to specific customers. In its submission of weighted-average home market prices General failed to identify which amounts were attributable to which customers; therefore, we disallowed these claims.

Comment 60: General argues that the Department incorrectly disallowed as directly related selling expenses those portions of its claimed warranty expenses involving unrelated stores and service outlets, and an in-house warranty expense.

Department's Position: We agree that the claims for stores and service outlets expenses are directly related selling expenses. However, the in-house warranty expense is an indirectly related selling expense because it is work performed by General's in-house service department. We have changed our calculations accordingly.

Comment 61: General argues that the Department incorrectly disallowed its volume rebates ("annual purchase amount credit" and "purchase amount credit" claims).

Department's Position: This is incorrect. We deducted the volume rebates from FMV.

Comment 62: General argues that we incorrectly disallowed its trade credit and market rebate ("TMCR") claim as a circumstance-of-sale adjustment directly attributable to color television sales and other products.

Department's Position: We disagree. The TMCR is a discount and we allowed the company-supplied model-specific portions of this claimed adjustment but we disallowed those portions not shown to be related to sales used for comparison purposes.

Comment 63: General argues that the Department incorrectly disallowed portions of its sales promotion expense which were allocated to color television receivers and color televisions/other products.

Department's Position: General did not establish that this expense was directly related to sales being reviewed; however, we allowed it as an indirectly related selling expense in our ESP offset calculation.

Comment 64: General argues that the Department incorrectly used the least favorable six-month home market adjustments for comparison to United States prices for the fourth period.

Department's Position: General did not submit home market sales data for the fourth period. As a result, we used monthly weighted-average prices for the third period as best information available. Also, as best information available, for circumstances-of-sale adjustments we used the smaller reported amounts.

Comment 65: General argues that in its ESP calculations for both periods the Department incorrectly deducted too much from the price of certain brand merchandise for commissions, Key City funds, and dealer advertising.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 66: General argues that the Department erred in deducting a volume incentive rebate from the United States price of one brand of merchandise when actually this rebate was given on certain sales of another brand of merchandise.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 67: General argues that for certain U.S. sales the Department erroneously deducted a cash discount twice, once on all sales and again for certain specific sales.

Department Position: We agree and have corrected our calculations accordingly.

Comment 68: Funai claims that because its products are combination units consisting of a television and video cassette recorder, they are outside the scope of the finding.

Department's Position: On August 19 and November 24, 1986, the Department received a scope exclusion request from Funai for its models 335–T and 335–Pro (without a tuner). Both are combination units incorporating a 7.5 inch color television with a microvideo cassette recorder. To determine whether these models are within the scope of the antidumping finding, we reviewed the descriptions of the merchandise in the petition, the ITC determination, and the antidumping finding. Combination units such as these were neither specifically included in nor excluded from these prior scope descriptions. Because these prior scope descriptions are ambiguous as to whether a unit consisting of several items, including a television, is covered by the finding, we used the four criteria set forth in *Diversified Products Corp.* v. *United States* 6 C.I.T. 155 (1983) in making our determination. These are the physical characteristics of the merchandise, the uses for which the merchandise is imported, the expectations of the ultimate purchasers, and the channels of trade in which the merchandise moves.

The physical characteristics of the model 335–T point to the prominence of the television function. This model has an integral tuner and has the ability to receive a broadcast signal and produce a video image. We consider that the consumer purchases the units primarily for the television function. Other features are incidental and used secondarily to the television receiver. This model moves through the same channels of trade as conventional televisions, and is imported for use as a television. The fact that this model is in combination with another feature does not alter this primary function. We have determined that, based on the above considerations, the model 335–T is within the scope of the antidumping finding on Japanese monochrome and color television receivers.

The physical characteristics of the model 335-Pro point to the prominence of the microvideo cassette recorder function. Because this model does not have an integral tuner it does not have the ability to receive a broadcast signal. Therefore, we have determined that the model 335-Pro is outside the scope of the antidumping finding on Japanese monochrome and color television receivers. We will instruct the Customs Service to liquidate all entries of the model 335-Pro.

Comment 69: Funai argues that, if the Department rules that its combination units are within the scope of the finding, we should use a third-country sale for FMV, rather than constructed value.

Department's Position: We disagree. Because Funai could not substantiate this third-country sale with the necessary documentation, we used constructed value as the best information available.

Comment 70: Funai argues that the Department incorrectly adjusted FMV for patent, royalty, and technical service expenses because these costs are included in the statutory 10 percent of materials and fabrication that the Department used for general expenses in its constructed value calculation.

Department's Position: We disagree. These U.S. expenses are not included in the general expenses portion of constructed value. We adjusted FMV for these directly-related U.S. selling expenses, in accordance with § 353.15 of the Commerce Regulations.

Comment 71: NEC argues that the Department failed to deduct home market credit expenses from its FMV.

Department's Position: This is incorrect. We did deduct home market credit expenses from FMV. Although this adjustment did not appear in the computer printout, it was in the computer program; we have corrected that printout to show this adjustment.

Comment 72: NEC argues that the Department deducted incorrect amounts for U.S. and home market inland freight expenses.

Department's Position: We deducted verified U.S. inland freight costs. Because we could not satisfactorily verify the home market inland freight expenses, we disallowed the claim.

Comment 73: NEC contests the Department's disallowance of its claimed adjustments for home market advertising and sales promotion expenses.

Department's Position: We could not satisfactorily verify these claims. In its claims NEC included advertising and sales promotion expenses incurred for other products and non-comparison models. *See* our position on Comment 42 for our guidelines for allowing claimed advertising and sales promotion expenses in this review.

Comment 74: NEC contests the Department's denial of its claimed adjustments for certain discounts, rebates, and returned merchandise expenses.

Department's Position: We agree and allowed the claimed adjustments for discounts and rebates allocated to sales of comparison models in the period. We deleted any negative quantity values (merchandise returns) in our FMV calculations.

Comment 75: NEC argues that the Department incorrectly disallowed an adjustment to FMV for differences in levels of trade by not deducting the selling, general, and administrative expenses incurred by NEC's sales companies.

Department's Position: We disagree in part. NEC did not demonstrate that the claimed expenses related solely to the sales of comparison models, and we do not permit a level-of-trade adjustment in these circumstances. (See our position on Comment 32.) We do, however, consider them indirectly-related selling expenses and have allocated them to the total sales value of all televisions sold in the home market during the period. In our ESP offset we have included NEC sales companies' selling expenses, as well as NEC's selling expenses, but not more than the ESP offset amount.

Comment 76: NEC argues that the Department incorrectly disallowed the labor portion of its warranty claim; we should allow a weighted-average of the warranty expenses incurred during the past five years.

Department's Position: We have corrected our final calculations, allowing only the model-specific warranty expense for parts costs as a directly-related selling expense, because we consider the labor portion performed by NEC's related service company to be a fixed cost, not directly related to the sales in this period. However, we have allowed this labor expense as an indirectly-related selling expense and included it in the ESP offset.

Comment 77: NEC argues that the Department's delay in completing the third administrative review on a timely basis has rendered this review illegal, and urges the Department to discontinue this review and liquidate all entries of NEC televisions with no dumping duties due.

Department's Position: We disagree. The Department has a statutory obligation to conduct this review under 19 U.S.C. 1675.

Comment 78: NEC argues that in calculating the imputed interest expense the Department should use NEC's verified actual interest rate rather the average prime rate in Japan for the period.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 79: NEC argues that the Department should base FMV on the discounted home market price of certain

models where more than 20 percent of the sales of these models were made at a discounted price over a six-month period.

Department's Position: We disagree. NEC merely noted significant price differences for certain sales to certain customers and assumed that these differences were due to quantity discounts. Since NEC furnished no evidence of any quantity discounts *per se*, it failed to satisfy the requirements of 19 CFR 353.14(b)(1) and we disallowed the claim.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results for General, Funai, Mitsubishi, NEC, and Sanyo, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Fujitsu General Co.	4/81-3/82	0.06
	4/82-3/83	0.15
Funai Electric Co.	4/81-3/82	7.63
	4/82-3/83	21.93
Hitachi Co.	4/81-3/83	0.16
Mitsubishi Electric Co.	4/81-3/82	0.05
	4/82-3/83	0.66
Nippon Electric Corporation	4/81-3/82	0.90
Otake Trading Co.	4/82-3/83	0
Sanyo Electric Co.	4/81-3/82	0
	4/82-3/83	2.86
Toshiba Corporation	4/81-3/82	[1] 0

[1] No commercial shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above.

Further, as provided for by section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the margin for Hitachi and Fujitsu General is less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For any shipments from Matsushita, Victor, or Sharp, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of these firms (50 FR 24278, June 10, 1985).

For any shipments from a new exporter, not covered in this or prior administrative reviews, whose first shipments of Japanese television receivers, monochrome or color, occurred after March 31, 1983, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 21.93 percent shall be required. These deposit requirements and waiver are effective for all shipments of Japanese television receivers, monochrome and color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: March 2, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-5033 Filed 3-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-606]

Final Determination of Sales at Less Than Fair Value: Tubeless Steel Disc Wheels From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that tubeless steel disc wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value and have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of tubeless steel disc wheels from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 20, 1987.

FOR FURTHER INFORMATION CONTACT: William Kane or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1766 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that tubeless steel disc wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, December 1, 1985 through May 31, 1986. Comparisons were based on United States price and foreign market value. Foreign market value was based on home market prices or constructed value.

The margins found for the companies investigated are listed in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On May 23, 1986, we received a petition filed in proper form from the Budd Company, on behalf of the domestic manufacturers of tubeless steel disc wheels. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain tubeless steel disc wheels from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on June 12, 1986 (51 FR 21952, June 17, 1986). On July 7, 1986, the ITC determined that there is a reasonable indication that imports of tubeless steel disc wheels from Brazil are materially injuring a U.S. industry (51 FR 25752, July 16, 1986).

On July 9, 1986, we presented antidumping duty questionnaires to Borlem S.A.—Impreedimentos Industriais (Borlem), and FNV-Veiculos E Equipamentos S.A. (FNV). Respondents requested and received a two-week extension in which to respond. On August 18, 1986, we requested additional information from FNV. On August 25, 1986, a response was received from Borlem. On September 10, 1986, we requested additional information from Borlem.

On September 16, 1986, the petitioner alleged that Borlem was selling the subject merchandise home market at less than the cost of producing the merchandise. On September 18, 1986, we requested cost information from Borlem We received additional information from FNV on August 22, September 15 and 23, October 6, and December 5,

1986. We received additional information from Borlem on September 19, October 8 and 14, and December 5, 9 and 11, 1986. On October 9, 1986, at the request of the petitioner, we extended the date of our preliminary determination to December 19, 1986 (51 FR 37050, October 17, 1986).

On December 19, 1986, we preliminarily determined that tubeless steel disc wheels are being, or are likely to be, sold in the United States at less than fair value (51 FR 46904, December 29, 1986). During the periods January 19 through January 30, 1987, and February 9, 1987, we performed verification of the Borlem and FNV responses. On February 17, 1987, we held a public hearing. On March 2, 1987, respondents requested a postponement of the date of our final determination. On March 4, 1987, we postponed the date of our final determination until not later than March 13, 1987 (52 FR 7288, March 10, 1987).

Scope of Investigation

The products covered by this investigation are tubeless steel disc wheels designed to be mounted with pneumatic tires having a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7 and 8 trucks, including tractors, and for use on semi-trailers and buses, as currently provided for under number 692.3230 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States purchase price to the foreign market value for the companies under investigation during the period December 1, 1985 through May 31, 1986.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price, since the merchandise was sold by the manufacturer to unrelated U.S. purchasers prior to importation. We calculated purchase price based on the packed, cif or c&f prices to unrelated purchasers in the United States. Where necessary, we corrected Borlem's reported prices to reflect actual prices paid. We made deductions, where appropriate, for foreign inland freight, foreign port charges, ocean freight and ocean insurance.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we used constructed value of the exported merchandise to determine foreign market value for FNV, because there were no sales of such or similar merchandise in the home market or to third countries.

As indicated in the "Case History" section of this notice, petitioner alleged that Borlem's home market sales prices were below the cost of production. During the first three months of the investigation Brazil's economy was considered to be hyperinflationary, and it was deemed to be inflationary thereafter. Therefore, we calculated a cost of production for each month during the period of investigation. Based on our investigation we determined that during the period of investigation there were sufficient sales overall at or above the cost of production for use as foreign market value. However, comparing these monthly costs to home market prices in those months, we found some months with no sales at or above the cost of production. Therefore, we based foreign market value for those months on constructed value. For those months where there were home market sales at or above the cost of production, we based foreign market value on those sales.

In accordance with current Departmental policy, we also deducted from foreign market value, where appropriate, sales taxes levied on domestic sales. We are unable to establish what the appropriate tax bases would be for the exported merchandise since it is not subject to the taxes. In the absence of knowing what the tax addition to United States price should be, we cannot calculate the differential. Therefore, as best information, we are making these adjustments by deducting these taxes from the price of the home market merchandise.

We made adjustments for differences in circumstances of sale for credit terms, in accordance with § 353.15 of our regulations. We offset commissions paid on U.S. sales with indirect selling expenses in the home market, in accordance with § 353.15(c) of our regulations. Where home market sales were used as foreign market value, we made allowances for differences in physical characteristics of the merchandise being compared, in accordance with § 353.16 of our regulations. We deducted home market packing costs and added U.S. packing costs.

Pursuant to § 353.56 of the Commerce regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Constructed Value/Cost of Production

The constructed values and the costs of production were based on the respondents' submissions, adjusted, where appropriate.

Because of the inflation that existed in the Brazilian economy during the period of investigation, in calculating cost of production and constructed value, we used replacement value for raw materials (steel inputs) based on actual purchases in the month or, if actual purchases were not made, on the price lists provided by the respondents. The price lists establish the upper limit for material prices, as mandated by the government. Though material prices are not required to be at the ceiling, all raw material prices verified were at the rates shown on the price lists. Thus, these raw material prices represented the replacement price in each month. The prices used involved payment terms of 45 days at seven percent interest which was the usual practice in the industry.

Conversion costs were considered to be stated at replacement value due to the quarterly adjustment of labor rates, the "ORTNization" of depreciation and the monthly billing of energy, etc. Thus, we determined that these costs did not warrant any adjustment.

Interest expense, offset by interest revenues accruing from investments for operations, was included. A deduction was made to adjust such expenses for the credit expenses included as part of selling expenses. Selling expenses related to the appropriate market were included. For Borlem, home market expenses were used. Since FNV did not have home or third country sales of the same general class or kind of merchandise, U.S. selling expenses were used as a surrogate.

The monetary correction of the balance sheet, per se, was not included as part of the cost of production of tubeless disc wheels. Since the Department used replacement value for its inputs, many of those cost adjustments captured by the monetary correction have been included. We have, moreover, included as a cost of production an amount reflecting the erosion of the value of inventory and an adjustment to the financial expenses so that only the actual interest expenses are reflected.

In all cases, general expenses exceeded the statutory minimum of ten percent of materials and fabrication. Therefore, actual general expenses, adjusted to reflect the effects of inflation, were used. The statutory eight percent for profit was included because the Department could not verify home

market profit. We added U.S. packing costs.

Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondents by using standards verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Petitioner's Comments

Petitioner's Comment 1: Petitioner contends that the Department should include "monetary correction to the balance sheet" (MCBS) as a cost of production. Despite respondents' assertions to the contrary, use of replacement costs does not obviate the need for including MCBS because replacement cost relates only to the production process and raw materials, whereas MCBS relates to the companies' financial operations. As a result, an adjustment to manufacturing costs alone does not pass through to a company's operating results the full effects of inflation. The separate, non-overlapping nature of these two types of costs is demonstrated in the revised responses—when replacement costs of materials were used with no addition for MCBS, the cost of production fell.

DOC Position: We agree that the use of replacement value for the cost of production would not obviate the need for including certain aspects of the monetary correction. Therefore, while we have not included the monetary correction of the balance sheet, per se, we have included the erosion of the inventory value caused by inflation (one aspect of the adjustment). Also, we have only captured the interest expenses which do not relate to the nominal increase in loan principal amount (another adjustment which would have been captured by the monetary correction).

Petitioner's Comment 2: Petitioner argues that the Department should include short-term financial expenses in the cost of production and constructed value and, moreover, should adjust those expenses to reflect the effects of inflation.

DOC Position: We have included short-term financial expenses in the cost of production and in constructed value. However, because we have calculated the replacement cost, including an adjusted value for the materials and other inputs purchased with these funds, we have only used "real" interest costs. Thus, monetary correction of loan principal was not included.

Petitioner's Comment 3: Petitioner argues that a carrying cost of semi-finished and finished product inventory should be imputed in the Department's cost of production.

DOC Position: We disagree. The actual costs of maintaining an inventory are already included within the cost of production. These costs include such expenses as a pro-rata share of insurance costs, interest expense, cost of building, etc. The Department did not impute a separate charge for carrying inventory.

Petitioner's Comment 4: Petitioner contends that prices of materials should be based on actual prices, and not on hypothetical "at sight" prices.

DOC Position: We agree. The Department used material prices incurred by FNV in the month of shipment for FNV. For Borlem, the Department based the material prices on a price list, since Borlem did not have current purchases of steel. The price lists used by the Department were for purchases with 45 days payment terms at seven percent interest since this appeared to be the usual practice in the industry.

Petitioner's Comment 5: Petitioner argues that FNV's variances should be calculated on a monthly basis and that its average quarterly variance calculation be rejected. Petitioner further contends that the Department should deny FNV's request to normalize costs, especially if quarterly variances are accepted.

DOC Position: We disagree. The variances computed on a quarterly basis more adequately reflect the yield and variance experiences of the company than monthly variances which fluctuate widely due to differences in monthly production levels. Wide variations in production could lead to the short-term distortion of unit costs. Thus, the normalization of costs over a period of time would provide a more reliable representation of the costs.

Petitioner's Comment 6: Petitioner contends that in calculating interest income as an offset to interest expense in calculating the financial expenses of both FNV and Borlem, only interest income related to production and sale of tubeless steel disc wheels may be included.

DOC Position: We agree. The Department included only interest income related to the production of tubeless steel disc wheels as an offset to interest expense in determining the cost of production.

Petitioner's Comment 7: Petitioner contends that the Department must ensure that any administrative expenses incurred by the parent company on the part of FNV are included in that element as reported by FNV.

DOC Position: We agree. The parent company performed certain services on behalf of FNV. The department included the value of such services within the specific cost category. Services performed were generally for sales and administration related activities, and thus were included in general, selling and administrative expenses.

Petitioner's Comment 8: Petitioner contends that the Department must ensure that any relevant research and development expenses are included in the costs reported by FNV and Borlem.

DOC Position: We agree. The Department verified that all relevant costs of research and development were included in the costs of production for FNV and Borlem.

Petitioner's Comment 9: Petitioner contends that the Department must review Borlem's "provision for doubtful accounts" (in the notes to their financial statement) to ensure that any applicable portion of such accounts is included in the calculation of cost of production.

DOC Position: The Department includes within the cost of production only those expenses of accounts receivable specific to the product under investigation. We verified payments on accounts and noted that the nature of these accounts suggested no need to recognize bad debt expense in excess of expenses already included in the cost of production.

Petitioner's Comment 10: Petitioner contends that the Department must ensure that any exchange rate gains or losses are properly included in the calculation of respondents' cost of production and constructed value, and that any such amounts include monetary correction.

DOC Postition: We disagree. The department includes only the exchange gains and losses directly related to product under investigation. The Department did not include any exchange gains or losses in the cost of production for tubeless steel disc wheels since these were not related to production.

Petitioner's Comment 11: Petitioner argues that packing labor costs should be included in the cost of production.

DOC Position: We agree. The Department verified and included the costs of packing labor and materials within the cost of production.

Respondents' Comments

Respondent's Comment 1: Respondents' argue that both monetary

correction of the balance sheet and monetary correction of loan principal must be eliminated from income statements for the Department's cost calculations.

DOC Position: See petitioner's "Comment 1."

Respondents' Comment 2: Respondents argue that the Department should adjust the steel costs to reflect their real cost to the companies. Respondents further contend the shift to replacement costs requires the adjustment of raw material costs to reflect the inflationary benefits of payment terms.

DOC Position: We agree in part. Respondents that purchase materials on fixed low rate terms accrue certain benefits. The Department considers that such benefits are a reduction in the company's overall financial needs. Thus, the company's actual interest costs are lowered as a consequence of the favorable terms related to the accounts payable. Therefore, the Department used the actual financial expenses as reflected on the company's records.

Respondents' Comment 3: Respondents argue that selling and administrative expenses, calculated as a percentage of cost of goods sold valued in historic costs, should be adjusted when applied to cost of goods sold valued in terms of replacement costs.

DOC Position: We agree. Selling and administrative expenses should be adjusted, as necessary, to reflect the use of replacement costs. The Department calculated indirect selling expenses as a percent of cost of manufacturing and used actual home market direct selling expenses for Borlem and direct U.S. selling expenses, as best information available, for FNV. Administrative expenses were computed as a percent of cost of manufacturing. The percentage of administrative expenses to cost of goods sold is a result of such expenses over a priod of time when nominal values were changing on a consistent basis for all inputs. Therefore, this percentage, when applied to replacement costs which reflect the nominal value of such costs for a month, would properly reflect the nominal value of administrative expenses for that month.

Respondents' Comment 4: Respondent FNV argues that the Department cannot use an expanded period of investigation for U.S. sales unless it considers, for purpose of foreign market value, third country sales included in such period.

DOC Position: While we included in our preliminary determination certain U.S. sales outside the investigative period until the exact of dates of sale could be confirmed, in our final calculation, we have included only sales which have been verified as occurring within the period.

Respondents' Comment 5: Respondent Borlem contends the Department must calculate the credit cost adjustment to Borlem's constructed value based on the differences between the U.S. and home market credit costs.

DOC Position: We agree. Home market credit cost calculations supplied by Borlem were expanded upon and confirmed at verification, and have been incorporated in the calculation of this adjustment.

Respondents' Comment 6: Respondent FNV argues that the Department should either ignore its sales in the period of investigation which were shipped on dates subsequent to the period for which costs were not developed, or, alternatively, apply the most contemporary verified costs to these later shipments.

Doc Position: The Department feels it cannot ignore sales made during the period of investigation simply because data relevant to those sales was not available. For these sales we have applied the most recent verified cost data available.

Respondents' Comment 7: Respondents argue that the Department should convert constructed values used as foreign market values at certified Federal Reserve rates in effect on the dates of shipment of the merchandise.

DOC Position: At the time of our preliminary determination, a pattern of long time periods between reported dates of sale and shipment indicated the likelihood that date of shipment reflected the actual date of sale. However, verification has established that all elements necessary to constitute a sale were present at the sale dates reported. Therefore, for our final determination we have converted foreign market values to U.S. dollars at the rates in effect on the verified dates of sale, in accordance with § 353.56(a) of our regulations.

Respondents' Comment 8: Respondents argue that the Department should recognize unrealized gains on holding inventory.

DOC Position: We disagree. Since the value of those inventories, measured in terms of replacement costs, did not increase at the same rate as inflation, the companies experienced a "real" loss, thus, any gain has nominal gain on inventory. We have included the real inventory holding loss as a cost of production.

Respondents' Comment 9: Respondents contend that interest costs in a replacement costs system should include only the "real" interest costs, not the inflationary interest costs. Respondents suggest that realized inventory gains offset the inflationary portion of interest costs, and the Department should include only "real" interest costs in calculating the cost of production. Respondents also argue that the Department should not impute credit expenses to constructed value based on the credit expenses for circumstances of sale adjustments.

DOC Position: We agree. Interest costs in a replacement cost system should include only the "real" interest costs, not the inflationary interest costs. The Department did not include in the financial expenses that portion of interest costs reported that related to the monetary correction of loan principal. This prevents the double counting of the inflationary effects related to financial expenses since the Department includes within the cost of production the inflationary effects of the inputs financed with these loans, such as depreciation. The interest costs were also offset by an amount related to credit expense. Since credit expense is considered a selling cost to be recovered by the prices charged in the various markets, these costs must be included. The Department includes the amount calculated for the circumstance of sale adjustment. Since this amount of credit will be deducted from the constructed value, to include a different amount in the costs would produce distorted results.

Respondents' Comment 10: Respondents argue that the Department should correct for the overstatement of packing labor costs included in selling, general and administrative costs.

DOC Position: We agree. Packing costs should include the costs for the materials and labor. When developing constructed value these costs are deducted from the cost of production prior to the determination of profit. The Act requires that the packing costs be added after the determination of the profit.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of tubeless steel disc wheels from Brazil, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash

deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percentage
Borlem S.A.—Impreedimentos Industrials	15.25
FNV—Veiculos E. Equipamentos S.A.	19.93
All Others	17.99

ITC Notification

In accordance with section 735(d) of the Act, we willl notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs Officers to assess an antidumping duty on tubeless steel disc wheels from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Import Administration.

March 13, 1987.

[FR Doc. 87-6114 Filed 3-19-87; 8:45 am]

BILLING CODE 3510-DS-M.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limit for Certain Cotton Textile Products Produced or Manufactured in Turkey

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 25, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On August 18, 1986 a notice was published in the **Federal Register** (51 FR 29513) which establishes import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987. Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, and at the request of the Government of Turkey, the restraint limit for Category 339 is being increased by carryforward.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Category 339.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on August 12, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987.

Effective on March 25, 1987, the directive of August 12, 1986 is further amended to include the following adjusted limit to the previously established restraint limit for cotton textile products in Category 339, as provided under the terms of the bilateral agreement of October 18, 1985, as amended and extended [1]:

Category	Adjusted 12-mo limit [1]
339	519,800 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1986.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Charman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-6131 Filed 3-19-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority

[1] Specific limits may be increased by carryover and carryforward up to 11 percent of which carryforward shall not constitute more than six percent of the applicable category limit.

contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 20, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

On August 18, 1986 a notice was published in the **Federal Register** (51 FR 29513) which establishes import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987. Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, and at the request of the Government of Turkey, swing is being applied to the restraint limit previously established for cotton textile products in Category 348.

The limit for Category 340/640 is being reduced to account for the amount of swing applied to Category 348.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 348 and 340/640.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on August 12, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987.

Effective on March 20, 1987, the directive of August 12, 1986 is further amended to include the following adjusted limits to the previously established restraint limits for cotton and man-made fiber textile products in Categories 348 and 340/640, as provided under the terms of the bilateral agreement of October 18, 1985, as amended and extended:[1]

Category	Adjusted 12-mo limit [1]
348	588,500 dozen of which not more than 294,250 dozen shall be in TSUSA numbers 376.5440, 384.0015, .0262, .0263, .0265, .0266, .0267, .0269, .0680, .0612, .0614, .0618, .0711, .0712, .0722, .0724, .0726, .0729, .0731, .0733, .0734, .0736, .0965, .2706, .2751, .3026, .3027, .3029, .3035, .3038, .3042, .3044, .3466, .4520, .4647, .4648, .4651, .4652, .4735, .4740, .4746, .4747, .4750, .4755, .4763, .4764, .4765, .4770, .4774, .4776, .5275, .5422, .5526, .7716, .7815, .9527, and 791, .7420.
340/640	411,786 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1986.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–6130 Filed 3–19–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The provisions of the bilateral agreement provides, in part, that: (1) Specific limits may be increased by 7 percent swing during an agreement period.

COMMODITY FUTURES TRADING COMMISSION

New York Futures Exchange, Inc.; Pre-Announced Trading Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on notice of proposed contract market rule and rule amendment.

SUMMARY: On January 23, 1987, the Commission published in the **Federal Register** a notice of a proposed New York Futures Exchange, Inc. rule and rule amendment to allow Exchange members to submit to the Exchange, and have the Exchange publicize, an advance notice of the member's or the member's customer's intention to trade futures or option contracts. 52 FR 2575. The **Federal Register** release seeks public comment on the New York Futures Exchange, Inc. proposal. The comment period on the notice of proposed contract market rule and rule amendment expired on March 9, 1987.

By letter dated February 6, 1987, the Coffee, Sugar & Cocoa Exchange, Inc. has requested a twenty-three-day extension of the comment period to April 1, 1987, so that it may fully address the issues raised in the notice of the proposed NYFE rule and rule amendment. In addition, by a letter dated February 27, 1987, the Chicago Board of Trade has requested a sixty-day extension of the comment period to May 8, 1987, so that it can develop an appropriate response to the questions posed by the Commission in the **Federal Register** notice. In order to ensure that all interested parties have an opportunity to submit meaningful comments, the Commission has determined to grant a sixty-day extension of the comment period commencing with March 9, 1987, the last day of the previous comment period.

DATE: Comments must be submitted by May 8, 1987.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, DC, on March 17, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–6081 Filed 3–19–87; 8:45 am]

BILLING CODE 6351-01-M

New York Mercantile Exchange, the Chicago Mercantile Exchange and the MidAmerica Commodity Exchange; Designation as Contract Markets in Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed futures contracts.

SUMMARY: The New York Mercantile Exchange ("NYME") has applied to the Commodity Futures Trading Commission ("Commission") for designation as a contract market in Liquefied Propane Gas futures. In addition, the Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in CME Treasury Index futures. Finally, the MidAmerica Commodity Exchange ("MCE") has applied for designation as a contract market in Australian Dollar futures. The Director of the Division of Economic Analysis of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments on the NYME's, CME's and MCE's proposed futures contracts must be received on or before May 19, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the specific futures contract(s) being addressed.

FOR FURTHER INFORMATION CONTACT: For the CME Treasury Index and the MCE Australian Dollar contracts, contact Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303. For the NYME's Liquefied Propane Gas contract, contact Richard Shilts at the same address and telephone number.

Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYME, CME and MCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the NYME, CME, or MCE in support of their applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on March 16, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–6003 Filed 3–19–87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 7 April 1987.

Time of Meeting: 0800–1700 hours, 7 April 1987.

Place: Pentagon, Washington, DC

Agenda: A special panel of the Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet to discuss with HQDA DCSOPS and DCSRDA the applicability of SDI SDC technology transfer to other Army missions. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Tilte 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contracted for further information at (202) 695–3039 or 695–7046.

Sally Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–6013 Filed 3–19–87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRAION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Accident Prevention Plans and Recordkeeping.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The clause "Accident Prevention" (48 CFR 52.236–13) requires Federal construction contractors to keep records of accidents incident to work performed under the contract that result in death, traumatic injury, occupational disease or damage to property, materials, supplies or equipment. Records of personal injuries are required by OSHA (OMB #1220–0029). The FAR requires records of damage to property, materials, supplies or equipment to provide background information when claims are brought against the Government.

If the contract involves work of a long duration, the Contractor must submit a written proposal for implementing the clause.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *2,106:* responses per respondent, *2*; total annual

responses, *4,212*; hours per response, *2*; and total burden hours, *8,424*; recordkeeping total burden hours *2,106*.

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping.

Dated: March 9, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–6025 Filed 3–19–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Presolicitation Notice and Response.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice responses are used to determine the number of solicitation documents needed and to ensure that interested offerors receive the solicitation documents.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *5,900;* responses per respondent, *8;* total annual responses *47,200;* hours per response, *.167;* and total burden hours, *7,882.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0037, Presolicitation Notice and Response.

Dated: March 10, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–6026 Filed 3–19–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; New System of Records

AGENCY: Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance withe the Privacy Act of 1974, as amended, the Secretary publishes this notice of a new system of records known as the Records of Elementary School Student Essays on the Bicentennial of the U.S. Constitution. The new system of records will enable the Secretary to collect and maintain a record of the names, addresses, schools, teachers, school districts, and essays of approximately 1,350 elementary school student essays. These records will be used by a national selection committee designated to choose the final representative essays, and will be used to provide subcontractors with the information needed for publication of a book compiling the final essays.

DATES: The Department filed a report of the new system of records with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Management and Budget (OMB) on March 17, 1987. The Department has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress. In no event will this system of records become effective before the minimum period for comment on the proposed routine uses expires on April 20, 1987.

ADDRESSES: Comments on the proposed routine uses should be addressed to the Privacy Act Officer, Office of Planning, Budget, and Evaluation, Public Affairs Service, Department of Education, 400 Maryland Avenue, SW. (Room 2089), Washington, DC 20202. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 2089 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Rusthoven, Confidential Assistant, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3073, FOB–6), Washington, DC 20202. Telephone: (202) 732–4610.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Secretary to publish in the **Federal Register** this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) at 34 CFR Part 5b.

The system of records described in this notice will enable the Secretary to collect and maintain a record of the 1,350 essays submitted to the national selection committee and the essayists' names, home addresses, school names, school addresses, teachers' names, and school districts.

Due to the nature of the procedures used for storing and retrieving records, and the safeguards put in place against unauthorized access, there is virtually no possibility that the privacy of the individual could be violated with respect to the information on the official entry form maintained in this system of records. These procedures and precautions are described in the system notice under the headings RETRIEVABILITY AND SAFEGUARDS.

Dated: March 17, 1987.

William J. Bennett,

Secretary of Education.

The Secretary publishes notice of a new system of records to read as follows:

18–05–0002

SYSTEM NAME:

Elementary School Essays on the Bicentennial of the U.S. Constitution. ED/OIIA/DUS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

400 Maryland Avenue, SW., Room 3073, FOB–6, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in grades 1–8 whose essays on "What the CONSTITUTION Means to Me and to Our Country" have been chosen by State Education Agencies, the Council for American Private Education,

the Department of Defense Dependent Schools, the Bureau of Indian Affairs, and the Department of State supported schools to compete for national awards and recognition in the 1987 Elementary Essay Project to celebrate the bicentennial of the Constitution.
Categories of records in the system:

Name, home address, school name, school address, teacher's name, school district name and address and student essay. All information supplied by students.

PURPOSE:

To evaluate entries in the elementry school essay contest on the Bicentennial of the U.S. Constitution, to determine winning entries, and to disseminate the result of the competition to the public.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THOSE USES:

Information may be released to members of the national selection committee for the purpose of determining eligibility and recommending awardees and to organizations assisting in the recognition ceremonies or presenting complementary activities. Selected data may be released to subcontractors for developing and distributing a booklet containing the final 150 national representative essays and the names and schools of all the individuals whose essays were forwarded to the national selection committee for consideration. This publication will be availble to the public and placed on deposit in a Federal repository. Information in this system of records may also be disclosed to a member of Congress in response to an inquiry made at the request of an individual to whom the records relate.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Contact system manager.

STORAGE:

The records are kept in file cabinets.

RETRIEVABILITY:

The records are accessed by name, state and school.

SAFEGUARDS:

The records are maintained in file cabinets in a secured Federal building.

RETENTION AND DISPOSAL:

The records are maintained for one year after the April 17, 1987 deadline. Records are then sent to the Federal Records Center where they are destroyed, pursuant to Federal records retention policy.

SYSTEM MANAGERS AND ADDRESS:

Deputy Under Secretary, Office of Intergovernmental and Interagency Affairs, Department of Education, Room 3073, FOB6, 400 Maryland Avenue, SW., Washington, DC 20202.

NOTIFICATION PROCEDURE:

Contact system manager.

RECORD ACCESS PROCEDURE:

Contact system manager.

CONTESTING RECORD PROCEDURE:

Contact system manager.

RECORD SOURCE CATEGORIES:

Students submit information by completing the Official Entry Form.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-6115 Filed 3-19-87; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

New Energy-Efficient Homes Programs; Draft Environmental Impact Statement; Public Meetings.

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of public meetings.

SUMMARY: This notice sets forth the schedule of public meetings BPA will hold for discussion of BPA's Draft Environmental Impact Statement (EIS), New Energy-Efficient Homes Programs. The draft EIS describes BPA's proposal to give builders and consumers more options for handling indoor air quality under BPA's energy conservation programs for new electrically heated homes. The meetings will provide an opportunity for interested parties to learns more about the proposal. The public may present comments on the EIS at the meetings.

DATES AND ADDRESSEES:

April 6, 1987, Meeting, 1:00–4:00 p.m., Benton County PUD Auditorium, 524 South Auburn Street, Kennewick, Washington

April 7, 1987, Meeting, 7:00–10:00 p.m., Cavanaugh's Inn at the Park Corbin Room, West 303 North River Drive, Spokane, Washington

April 8, 1987 Registration Meeting, 1:00–1:30 p.m., 1:30–4:30 p.m., Sea tac—Red Lion Motor Inn Mercury 10 Room 18740 Pacific Highway South Seattle, Washington

April 22, 1987 Registration Meeting, 6:30–7:00 p.m., 7:00–9:00 p.m., Eugene–Springfield Red Lion Concord Room, 3280 Gateway Road, Springfield, Oregon.

FOR FURTHER INFORMATION CONTACT: Copies of the Draft EIS, as well as additional or clarifying information, may be obtained by writing or calling Mr. Anthony R. Morrell, Environmental Manager, P.O. Box 3621–SJ, Portland, Oregon 97208; telephone 503–230–5136.

Issue in Portland, Oregon, March 12, 1987

Robert E. Ratcliffe,

Executive Assistant Administrator.

[FR Doc. 87-6082 Filed 3-19-87; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

Agway, Inc., Agway Petroleum Corp., and Texas City Refining, Inc.; Final Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Agway, Inc., Agway Petroleum Corp., and Texas City Refining, Inc. (Agway) shall be made final as proposed. The Consent Order resolves, with certain exceptions, matters relating to Agway's compliance with the federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. To resolve those matters, Agway will pay the DOE one million dollars in three isntallments, plus interest from the date the proposed Consent Order was executed. Persons claiming to have been harmed by Agway's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Agway Consent Order final was made after the expiration of the thirty-day comment period provided by 10 CFR 205.199J.

FOR FURTHER INFORMATION CONTACT: Emily E. Sommers, Economic Regulatory Administration, 1000 Independence

Avenue SW., Washington, DC 20585. (202) 586–8872.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Decision

I. Introduction

On February 9, 1987, ERA issued a notice announcing a proposed Consent Order between DOE and Agway which, with certain exceptions, would resolve matters relating to Agway's compliance with federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 52 FR 4099 (February 9, 1987). The proposed Consent Order, which requires Agway, a farm cooperative, to pay DOE one million dollars,* is for the settlement of Agway's potential liability for possible overcharges to outside entities, as fully explained in the February 9 **Federal Register** notice.

The February 9 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The **Federal Register** notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final.

ERA received no written comments. Thus, no information has been provided that would support the modification or rejection of the proposed Consent Order with Agway. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

II. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Agway and DOE is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register.**

Issued in Washington, DC, on March 12, 1987.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 87–6049 Filed 3–19–87; 8:45 am]

BILLING CODE 6450–01–M

*The first $300,000 including interest accrued on the entire one million dollar principal from the date the proposed Consent Order was executed by DOE will be disbursed to DOE within 30 days of publication of this notice. Within 120 days of the first payment, Agway will make a second payment to DOE of $400,000 including accrued interest on the remaining principal. Within 120 days of the second payment, Agway will pay to DOE the remaining principal plus accrued interest on the remaining principal.

ERA [Docket No. 87–10–NG]

GasMark, Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 12, 1987, of an application from GasMark, Inc. (GasMark), for blanket authorization to import Canadian natural gas for short-term and spot market sales to customers in the United States or to act as an agent for such sales. Authorization is requested to import up to 90,000 MMBtu's per day over a two-year term beginning on the date of first delivery of the import. The applicant is a Houston corporation that has its principal place of business in Houston, Texas. GasMark proposes to purchase the natural gas from various reliable Canadian producers. The gas would be sold to customers that are expected to include gas distribution companies, pipelines, and commercial and industrial end-users. The specific terms of each import and sale would be individually negotiated, including the price and volumes, and would be responsive to current market conditions. GasMark intends to use existing pipeline facilities to transport the gas, and proposes to submit quarterly reports to the ERA, on a confidential basis, describing the import transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 20, 1987.

FOR FURTHER INFORMATION CONTACT:

Allyson Reilly, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., April 20, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for

a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of GasMark's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 6, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–6047 Filed 3–19–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–65–NG]

Gulf Energy Marketing Co.; Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order approving blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Gulf Energy Marketing Company (Gulf Energy) to import Canaidan natural gas on a short-term basis. The order issued in ERA Docket No. 86–65–NG authorizes Gulf Energy to import up to 150 Bcf of Canadian natural gas during a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 12, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–6050 Filed 3–19–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–01–NG]

Quintana Minerals Corp.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 12, 1987, of an application filed by Quintana Minerals Corporation (QMC) for blanket authorization to import up to 40 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery of the import. QMC proposes to purchase the natural gas from Quintana Exploration Canada, Ltd. (QECL), for its own account or for others and to resell those imported volumes on the short-term or spot market to purchasers in the U.S. QMC intends to utilize existing pipeline facilities for the transportation of the volumes imported. QMC proposes to submit quarterly reports giving details of individual transactions in the month following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on April 20, 1989.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Natural Gas Divsion, Office of Fuels Programs, Economic Regulatory Administation, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., April 20, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in d'spute that are relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests

additional procedures, a final opinion and order may be isued based on the offical record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Quintana's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, (202) 586-9478, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays.

Issued in Washington, DC, on March 6, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-6048 Filed 3-19-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3172-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 2, 1987 through March 6, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-BLM-J02011-WY, Rating LO, Hickey Mtn.—Table Mtn. Oil and Gas Field Development, Lease, Section 10 and 404 Permits, WY. SUMMARY: EPA's review concluded that the draft EIS provides a detailed analysis of potential impacts to the environment resulting from possible full field development. General and specific impact mitigation measures appear to be well conceived and practicable.

ERP No. DR-COE-K36084-CA, Rating EU3, Lower San Joaquin River and Tributaries Flood Control Plan, Channel Clearing and Snagging, Modifications, CA. SUMMARY: EPA determined that the proposed project is environmentally unsatisfactory because it will significantly degrade the environment of the San Joaquin River due to the loss of 135 acres of riparian habitat (30% of this type of habitat still existing in the project locale). EPA's review also noted that information on alternatives and mitigation was lacking in the revised draft EIS, and that mitigation proposed in the EIS was inadequate to compensate for habitat losses. EPA noted that if these issues are not resolved prior to issuance of the final EIS, that EPA may consider referring the project to the Council on Environmental Quality for resolution. EPA expressed its willingness to meet with the Army Corps to further discuss these serious concerns prior to release of the final EIS.

ERP No. D-DOE-K08014-00, Rating EC2, Third 500kV AC Intertie Transmission Path, Tesla Substation, California to Southern Oregon, Los Banos Substation to Gates Substation and Pacific Northwest Facility Reinforcements, Construction, Operation/Maintenance, CA, OR, WA. SUMMARY: EPA expressed environmental concerns because the draft EIS: (1) Eliminated several alternative segments that could significantly reduce adverse water quality and wetlands impacts; (2) provided little information on pesticide/herbicides use and ways to minimize harm to water bodies and sensitive habitats from chemical contaimination and sedimentation effects; and (3) inadequately discussed project impacts on Water Quality Standards beneficial uses such as fisheries. EPA also expressed concerns about the adequacy of mitigation proposed in the draft EIS for water quality, wetlands, and beneficial use impacts.

ERP No. D-FHW-E40702-NC, Rating EC2, US 117 Construction, Mt. Olive Bypass to I-40, Sect. 10 and 404 Permits, NC. SUMMARY: EPA's review found that the impacts from the proposed project are generally well documented. The new location segment of each alternative will involve the taking of forests and wetlands. EPA requests that wetland and noise impacts be mitigated.

ERP No. D-JUS-E81027-GA, Rating EC2, Jesup Federal Correctional Institution Complex, Construction and Operation, GA. SUMMARY: EPA has reviewed the draft EIS and has identified a number of environmental concerns that should be addressed in the final EIS. These include running a revised CO dispersion analysis and providing a more detailed storm water management and wetland mitigation plan.

Final EISs

ERP No. F-FHA-E24007-KY, Mammoth Cave Area Waste-water Treatment Facilities, Loan, KY. (Adoption of EPA final EIS, filed 8-21-81) SUMMARY: EPA has reviewed the FmHA action and has no objections to the proposed action subject to it being consistent with the Amended 201 Facilities Plan and mitigation contained in the Record of Decision.

ERP No. F-FHW-E40687-KY, KY-44 Reconstruction KY-55 to KY-44 Relocated, KY. SUMMARY: EPA's main concerns included the proposed crossing of Brashears Creek and potential secondary development impacts along the proposed alignment. Special care should be exercised if the crossing is pursued to minimize impacts on the high sport fisheries and water quality value of Brashears Creek.

ERP NO. F-FHW-E40694-KY, Blankenbaker Rd./I-64 Interchange Improvement, KY-1819 at Jeffersontown to US 60 at Middletown, 404 Permit, KY. SUMMARY: EPA is concerned about air quality and noise impacts. EPA requested that an air quality intersection analysis be provided and that noise abatement be further considered in a follow-up letter to EPA.

Dated: March 17, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-6128 Filed 3-19-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3171-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, EPA. Availability of Environmental Impact Statements Filed March 9, 1987 Through March 13, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870087, Draft, SCS, NB, Middle Big Nemaha Watershed, Protection and Flood Prevention Plan, Due: May 4, 1987, Contact: Ron Hendricks (402) 471-5300

EIS No. 870088, Final, BLM, CA, NV, Benton-Owens Valley and Bodie Coleville Study Areas, Wilderness Recommendations, Walker Bishop, and Caliente Resource Areas, Due: April 20, 1987, Contact: Gary Pavek (202) 343-6064

EIS No. 870089, Draft, FHW, KS, South Lawrence Trafficway Construction, Kansas Turnpike/I-70 to K-10/Noria Road, Douglas County, Due: May 11, 1987, Contact: Robert Deatrick (913) 752-2550

EIS No. 870090, Draft, FHW, MD, MD-22 Improvements, Bel Air to I-95, Harford County, Due: May 8, 1987, Contact: Edward Terry (301) 962-4010

EIS No. 870091, Report, COE, NC, Atlantic Intercoastal Waterway Maintenance, Virginia State Line to Beaufort Reach, Adams Creek-Cone Creek Section, Ranges T, U, and Gallants Channel, Carteret County, Contact: Chris Correale (919) 343–4745

EIS No. 870092, Final, APH, PRO, SEV, 1987 Rangeland Grasshopper Cooperative Management Program, Due: April 20, 1987, Contact: Charles Bare (301) 436–8295

EIS No. 870093, Draft, FHW, MA, MA–2/ Alewife Brook Parkway Improvements, MA–2/Pleasant Street to Alewife Brook Parkway/Fresh Pond Parkway, Middlesex County, Due: May 4, 1987, Contact: Clement Dunkley (617) 464–2515

EIS No. 870094, USN, Draft, AZ, Joint Guayule Rubber Program, Processing Operations, Prototype Rubber Extraction Facility, Construction and Operation, Gila River Indian Reservation, Maricopa and Pinal Counties, Due: May 4, 1987, Contact: Carmela Bailey (202) 692–3627

EIS No. 870095, Final, CDB, IL, Near Loop Residential Development, Areawide Study, Cook County, Due: April 20, 1987, Contact: Harry Blus (312) 353–2977

Amended Notices

EIS No. 870077, Draft, BLM, WY, Pinedale Resource Area, Resource Management Plan, Sublette and Lincoln Counties, Due: June 3, 1987, Published FR 3–13–87—Incorrect due date

EIS No. 870070, Final, DOE, CO, Climax Uranium Mill Site, Remedial Actions and Cleanup of Radioactive Contaminated Material, Grand Junciton, Mesa County, Due: April 8, 1987, Published FR 3–6–87—Review period extended

Dated: March 17, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–6129 Filed 3–19–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3173–2]

Open Meeting of the Asbestos Hazard Emergency Response Act Negotiated Rulemaking Advisory Committee

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of a two-day open meeting of the Advisory Committee negotiating proposed regulations under the Asbestos Hazard Emergency Response Act (AHERA) of 1986.

The meeting is scheduled on Thursday, April 2, and Friday, April 3, 1987. On Thursday, the meeting will be held at the Washington Plaza Hotel, Massachusetts and Vermont Avenue, NW., Washington, DC. On Friday, the meeting will be held at the National Education Association, Crabtree Auditorium, 1201 16th Street, NW., Washington, DC. Each day, the meeting will begin at 9:00 a.m. and will run until completion.

The purpose of this meeting is to complete work and reach a consensus on the substantive issues that the Committee has identified for resolution.

If interested in receiving more information, please contact Kathy Tyson at (202) 382–5475.

Dated: March 8, 1987.

John M. Campbell, Jr.,

Acting Assistant Administrator.

[FR Doc. 87–6198 Filed 3–19–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3173–1]

Meeting of the Advisory Committee Negotiating the Hazardous Waste Injection Restrictions Rulemaking

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of an open two day meeting of the Advisory Committee negotiating Hazardous Waste Injection Restrictions.

The meeting will be held on Monday and Tuesday, March 30-31, 1987, at the Conservation Foundation, 1255 23rd Street, NW., First Floor Library, Washington, DC. On both days the meeting will start at 9:30 a.m. and will run until completion. The purpose of the meeting is to continue working on the substantive issues which the Committee has identified for resolution.

If interested in more information, please contact Kathy Tyson at (202) 382–5475.

Dated: March 17, 1987.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 87–6197 Filed 3–19–87; 8:45am]

BILLING CODE 6560–50–M

[FRL–3172–3]

Science Advisory Board Executive Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board on April 9–10, 1987. The meeting will be held at the U.S. Environmental Protection Agency, 401 M Street, SW., in the Administrator's Conference Room, 1103. The meeting will begin on 9:00 a.m. April 9 and will adjourn at approximately 12:00 noon on April 10.

Issues to be discussed at the meeting include: a briefing on EPA's comparative risk study; discussion of a SAB exposure assessment concept paper; establishment of an EPA initiative for strategic research planning and the SAB's role in such an initiative; reports of committees and subcommittees; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW., Washington, DC 20460 or call (202) 382–4126 by close of business April 2, 1987.

Dated: March 10, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–6073 Filed 3–19–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51652A; FRL–3169–4]

Certain Chemicals Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of three premanufacture notices that were inadvertently omitted from the weekly notice of receipt (OPTS–51652) published in the **Federal Register** on December 9, 1986 (51 FR 236).

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202) 382–3725.

DATES: Close of Review Period: P 87–247, 87–248 and 87–249 March 19, 1987.

SUPPLEMENTARY INFORMATION: In FR Doc. 87–44376 appearing in the **Federal Register** of December 9, 1986 (51 FR 236) the following information was inadvertently omitted from OPTS–51652:

P 87–247

Importer. Confidential.

Chemical. (G) Thermoplastic elastomer.

Use/Import. (S) Tube, sealing, etc., for industrial instruments. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg.

P 87-248

Manufacturer. Texaco Chemical Company.

Chemical. (S) Ethanamine, 2,2'-[oxybis(2,1-ethanediyloxy)]bis-.

Use/Production. (S) Industrial epoxy curing agent, and polyamides. Prod. range: Confidential.

Toxicity Data: Acute oral: 2.603 g/kg; Acute dermal: >8.0 g/kg; Irritation: Skin—Severe, Eye—Extreme; Skin sensitization: Sensitizer; Ames test: Non-mutagenic.

P 87 249

Manufacturer: Confidential.

Chemical: (G) Acrylic acid/polyol copolymer.

Use Production: (G) Emulsion stabilizer. Prod. range: Confidential.

Dated: February 13, 1987.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 87-5566 Filed 3-19-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51666; FRL-3169-3]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-four such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-716, 87-717, 87-718, and 87-719—May 27, 1987.

P 87-720, 87-721, 87-722, 87-723, and 87-724—May 30, 1987.

P 87-726, 87-727, 87-728, 87-729, 87-730, 87-731, 87-732, 87-733, and 87-734—May 31, 1987.

P 87-735, 87-736, 87-737, and 87-738—June 1, 1987.

P 87-739, 87-740, 87-741, 87-742, 87-743, 87-744, 87-745, 87-746, 87-747, 87-748, 87-749, and 87-750—June 2, 1987.

Written comments by:

P 87-716, 87-717, 87-718, and 87-719—April 27, 1987.

P 87-720, 87-721, 87-722, 87-723, and 87-724—April 30, 1987.

P 87-726, 87-727, 87-728, 87-729, 87-730, 87-731, 87-732, 87-733, and 87-734—May 1, 1987.

P 87-735, 87-736, 87-737, and 87-738—May 2, 1987.

P 87-739, 87-740, 87-741, 87-742, 87-743, 87-744, 87-745, 87-746, 87-747, 87-748, 87-749, and 87-750—May 3, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51666]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-716

Manufacturer. Ethyl Corporation.

Chemical. (G) Aromatic imide.

Use/Production. (G) Intermediate—destructive use. Prod. range: Confidential.

P 87-717

Manufacturer. Specialty Chemical Products Corporation.

Chemical. (G) Glycol ether.

Use/Production. (G) Solvent. Prod. range: Confidential.

Toxicity Data. Acute oral: 3.20 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.

P 87-718

Manufacturer. Shell Oil Company.

Chemical. (S) Polymer of benzene, ethenyl-, polymer with butadiene, hydrogenated (containing antitoxidants 6683-19-87 and 1709-70-2), vinyltriethoxysilane; and peroxide(1,1,4,4-tetramethyl-1,4-butanediyl)bis(1,1-dimethylethyl).

Use/Production. (G) Specialty polymer-open non-dispersive use. Prod. range: Confidential.

P 87-719

Manufacturer. Confidential.

Chemical. (S) Polymer of epoxy resin; di-n-butylamine, and di-ethanolamine.

Use/Production. (S) Coating binder for industrial use. Prod. range: 27,000 to 30,000 kg/yr.

P 87-720

Manufacturer. Rohm and Haas Company.

Chemical. (G) Modified polyacrylate polymer.

Use/Production. (G) Polymeric dispersant. Prod. range: Confidential.

P 87-721

Manufacturer. Rohm and Haas Company.

Chemical. (G) Modified polyacrylate polymer.

Use/Production. (G) Polymeric dispersant. Prod. range: Confidential.

87-722

Importer. Confidential.

Chemical. (G) Aliphatic polyisocyanate.

Use/Import. (S) Industrial crosslinking agent for aqueous adhesive emulsions. Import range: Confidential.

P 87-723

Manufacturer. Confidential.

Chemical. (G) Metalated alkylphenol copolymer.

Use/Import. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-724

Manufacturer. Confidential.

Chemical. (G) Urethane modified polyacid.

Use/Production. (G) Dispersively used industrial coating. Prod. range: 30,000 to 300,500 kg/yr.

P 87-725

Manufacturer. Confidential.

Chemical. (G) Anhydride copolymer-methacrylated half ester.

Use/Production. (S) Industrial electronic photoresist; electronic solder mask. Prod. range: Confidential.

Toxicity Data. Irritation: Eye—Non-irritant.

P 87-726

Importer. Sumitomo Corporation of America.

Chemical. (G) Poly perfluoroalkylpolyoxyethylenemethacrylat and polyoxyethylenemethacrylate.

Use/Production. (S) Industrial wetting agent in paints. Prod. range: 1,000 to 3,000 kg/yr.

P 87-727

Manufacturer. Confidential.

Chemical. (G) Mixture of polyfunctional methacrylate of polyisocyanate adduct of alkoxylate

polyol and aromatic urethane with methacrylate end groups.

Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

P 87-728

Importer. Sherex Chemical Company, Inc.

Chemical. (G) Polyamide.

Use/Import. (G) Industrial hot melt adhesive. Import range: Confidential.

P 87-729

Manufacturer. Confidential.

Chemical. (G) Alkylimidazole pyromellitic anhydride salt.

Use/Production. (G) Catalyst. Prod. range: Confidential.

P 87-730

Manufacturer. Occidental Chemical Corporation.

Chemical. (G) Polyether.

Use/Production. (G) Rheology modifier or thickener for water based systems. Prod. range: Confidential.

P 87-731

Manufacturer. Confidential.

Chemical. (G) Aqueous polyurethane dispersion.

Use/Production. (S) Industrial polyurethane dispersion for adhesives formulations. Prod. range: Confidential.

P 87-732

Manufacturer. Confidential.

Chemical. (G) Ethylene-silane copolymer.

Use/Production. (S) Base polymer for wire and cable insulation; energy absorbing foam; and polymer modifying additive. Prod. range: Confidential.

P 87-733

Manufacturer. Confidential.

Chemical. (G) Unsaturated fatty acid epoxy ester.

Use/Production. (S) Site-limited intermediate for water reducible industrial air-dry coatings. Prod. range: Confidential.

P 87-734

Manufacturer. Confidential.

Chemical. (G) Water reducible epoxy copolymer resin.

Use/Production. (S) Water reducible industrial air-dry coatings. Prod. range: Confidential.

P 87-735

Manufacturer. Vista Chemical Company.

Chemical. (G) Calcium aluminate alcohol ethoxylate (dispersed).

Use/Production. (G) Catalyst. Prod. range: Confidential.

P 87-736

Importer. Castroll, Incorporated.

Chemical. (G) Reaction product of carboxylic acids with boric alkanolamide.

Use/Production. (G) Cutting fluid additive. Prod. range: Confidential.

P 87-737

Importer. Confidential.

Chemical. (G) Silicone resin.

Use/Import. (S) Industrial and commercial silicone resin additive to release agents and antifoam compound and silicone release additive for antifoam emulsions. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg.

P 87-738

Manufacturer. Southland Corporation.

Chemical. (G) Amide soap blend.

Use/Production. (G) Lube additive. Prod. range: 10,000 to 20,000 kg/yr.

P 87-739

Manufacturer. Confidential.

Chemical. (G) Styrenated hydroxyfunctional methacrylic acrylic polymer.

Use/Production. (G) Industrial coating polymer having a dispersive use. Prod. range: 100,000 to 600,000 kg/yr.

P 87-740

Manufacturer. Vista Chemical Company.

Chemical. (G) C1416 dialkyl benzenes.

Use/Production. (S) Industrial feedstock for manufacture of oil-soluble sulfonates. Prod. range: Confidential.

P 87-741

Manufacturer. Reichhold Chemicals, Incorporated.

Chemical. (G) Cross-linked carboxylated butadiene styrene polymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 87-742

Manufacturer. Confidential.

Chemical. (G) Heteropolycyclichydraz base.

Use/Production. (S) Site-limited manufacture of dyes. Prod. range: Confidential.

P 87-743

Manufacturer. Confidential.

Chemical. (G) Water reducible epoxy ester copolymer resin.

Use/Production. (S) Site-limited water reducible industrial air-dry coatings. Prod. range: Confidential.

P 87-744

Manufacturer. Confidential.

Chemical. (G) Unsaturated fatty acid epoxy ester.

Use/Production. (S) Site-limited intermediate for water reducible industrial air-dry. Prod. range: Confidential.

P 87-745

Manufacturer. Confidential.

Chemical. (G) Isocyanic acid, polymethylenepolyphenylene ester polymer with poly esterdiol.

Use/Production. (S) Industrial manufacture of rigid polyurethane/polyisocyanurate foam panels.

P 87-746

Manufacturer. Confidential.

Chemical. (G) 1,1'-methylenebis[isocyanatobenzene]polymer with isocyanic acid, polymethylene polyphenylene ester and a polyesterdiol.

Use/Production. (S) Industrial production of polyurethane/polyisocyanurate foam panels. Prod. range: Confidential.

P 87-747

Importer. Confidential.

Chemical. (G) Mixed polyester polymer.

Use/Import. (S) Emulsifier. Import range: Confidential.

P 87-748

Manufacturer. Confidential.

Chemical. (G) Aliphatic polycarbonate urethane.

Use/Production. (S) Coating and adhesive. Prod. range: 20,000 to 40,000 kg/yr.

P 87-749

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polystyrylpyridine resin.

Use/Production. (S) Industrial matrix resin for graphite or glass laminates used in fire blocking applications; matrix resin for graphite, glass, or Kevlar composites used for structural applications; matrix resin for graphite, glass, or Kevlar composites used for non-structural, ablative applications; and matrix resin for glass laminates used for electrical application.

P 87-750

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic-anhydride copolymer.

Use/Production. (G) Destructive and open, non-dispersive use. Prod. range: Confidential.

Dated: March 9, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-5565 Filed 3-19-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51665; FRL-3168-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-683—April 26, 1987.

P 87-677, 87-678, 87-679, 87-680, 87-681, 87-682, 87-684, 87-685, 87-686, 87-687, 87-688, 87-689, 87-690, 87-691, 87-692, and 87-693—May 20, 1987.

P 87-694, 87-695, 87-696, 87-697, 87-698, and 87-699—May 24, 1987.

P 87-700, 87-701, 87-702, 87-703, 87-704, 87-705, and 87-706—May 25, 1987.

P 87-707, 87-708, 87-709, 87-710, 87-711, 87-712, 87-713, 87-714, and 87-715—May 26, 1987.—

Written comments by:

P 87-683—March 23, 1987.

P 87-677, 87-678, 87-679, 87-680, 87-681, 87-682, 87-684, 87-685, 87-686, 87-687, 87-688, 87-689, 87-690, 87-691, 87-692, and 87-693—April 20, 1987.

P 87-694, 87-695, 87-696—April 24, 1987.

P 87-697, 87-698 and 87-699, 87-700, 87-701, 87-702, 87-703, 87-704, 87-705, and 87-706—April 25, 1987.

P 87-707, 87-708, 87-709, 87-710, 87-711, 87-712, 87-713, 87-714, and 87-715—April 26, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51665]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-677

Importer. DSM Resins US Incorporated.

Chemical. (G) Maleated phenolic modified hydrocarbon rosin derivative.

Use/Import. (G) Printing inks. Import. range: Confidential.

P 87-678

Importer. DSM Resins US Incorporated.

Chemical. (G) Salt of maleated phenolic modified hydrocarbon rosin derivative.

Use/Import. (G) Printing inks. Import. range: Confidential.

P 87-679

Importer. DSM Resins US Incorporated.

Chemical. (G) Phenolic modified rosinate.

Use/Import. (G) Printing inks. Import. range: Confidential.

P 87-680

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamel. Import. range: Confidential.

P 87-681

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamel. Import. range: Confidential.

P 87-682

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamel. Import. range: Confidential.

P 87-683

Manufacturer. Confidential.

Chemical. (G) Hydrogen bis[1-[(3,5-disubstituted-2-hydroxy phenyl) azo]-3-(N-monosubstituted)-2-naphthalenolate(2-)]chromate(1-).

Use/Production. (G) Toner for plain paper copy machine (electrographic copy machine). Prod. range: Confidential.

Toxicity Data. Acute oral : >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Mild; Skin sensitization: Non-sensitizer; Ames test—Non-mutagenic; LC_{50} 48 hr (Daphnia magna): 10 mg/1; BOD 28 days: 3.20 mg/1; Micronucleus test: 8,000 mg/kg.

P 87-684

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamels. Import range: Confidential.

P 87-685

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamels. Import range: Confidential.

P 87-686

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamels. Import range: Confidential.

P 87-687

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamels. Import range: Confidential.

P 87-688

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamels. Import range: Confidential.

P 87-689

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/ glycolester.

Use/Import. (G) Protective baking enamels. Import range: Confidential.

P 87-690

Importer. DSM Resins US Incorporated.

Chemical. (G) Dibasic acid/glycolester.
Use/Import. (G) Protective baking enamels. Import range: Confidential.

P 87-691

Importer. Confidential.
Chemical. (G) Blocked aliphatic urethane polymer.
Use/Import. (S) Textile finish. Import. range: Confidential.

P 87-692

Importer. Confidential.
Chemical. (G) Substituted phenyl thio substituted benzene.
Use/Import. (G) Bonding agent. Import. range: Confidential.

P 87-693

Manufacturer. International Minerals and Chemical Corporation.
Chemical. (S) *Escherichia coli* K-12, SG-936 was transformed with a plasmid vector which contains the met-somatomedin-C/insulin-like growth factor-1 (met-SmC/IGF-1) gene from human liver cells.
Use/Production. (S) The microorganism will be used only for the biosynthesis of human met-SmC/IGF-1. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Workers in the fermentation room who maintain and transfer cultures of the microorganism. The host-vector system used is not conjugation proficient so transmission of the plasmid vector from the propagation host to other non-laboratory hosts, e.g., the *E. coli* in the intestinal flora of humans, will not occur.
Environmental Release. Production and processing: Live cells used for biosynthesis are contained in closed, sealed fermentation vessel systems. At the end of biosynthesis, the cells are killed *in situ* using a validated system, with all subsequent process steps being conducted with dead cells.

P 87-694

Manufacturer. Confidential.
Chemical. (G) Aliphatic poly anhydride.
Use/Production. (G) Industrial specialty chemical. Prod. range: 3,500 to 22,700 kg/yr.

P 87-695

Manufacturer. Confidential.
Chemical. (G) Aliphatic poly anhydride.
Use/Production. (G) Industrial specialty chemical. Prod. range: 3,500 to 22,700 kg/yr.

P 87-696

Manufacturer. Confidential.
Chemical. (G) Aliphatic poly anhydride.
Use/Production. (G) Industrial specialty chemical. Prod. range: 3,500 to 22,700 kg/yr.

P 87-697

Manufacturer. Dow Corning Corporation.
Chemical. (G) Silane, fatty acid glycol, fluorinted alkyl.
Use/Production. (G) Lubricant. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Moderate, Eye—Moderate; Ames test: Negative.

P 87-698

Manufacturer. Dow Corning Corporation.
Chemical. (G) Alkylmethyl silicone glycol copolymer.
Use/Production. (G) Emulsifier. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Eye—Slight; Ames test: Negative; LC_{50} 48 hr (Daphnia magna): >100 parts per million; LC_{50} 96 hr (Rainbow trout): >100 ppm.

P 87-699

Manufacturer. The Dow Chemical Company.
Chemical. (G) Dimethyl silicone glycol copolymer.
Use/Production. (G) Emulsifier. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Eye—Non-irritant; Ames test: negative; LC_{50} 48 hr (Daphnia magna): >100 ppm; LC_{50} 96 hr (Rainbow trout): >100 ppm.

P 87-700

Manufacturer. Confidential.
Chemical. (S) C_{16}-C_{22} unsaturated alkyl dimethyl benzyl ammonium chloride.
Use/Production. (S) Hair conditioner, emulsifier for cutting and lube oils, and fabric treatment. Prod. range: Confidential. P 87-701
Manufacturer. Confidential.
Chemical. (G) Aromatic substituted acrylic copolymer.
Use/Production. (G) Polymer used in product formulation having a partially contained use. Prod. range: 5,000 to 10,000 kg/yr.

P 87-702

Manufacturer. Danichiseika Color & Chemicals America, Inc.
Chemical. (G) Butanamide; N-(4-alkylcarboxyphenyl)-3-oxo-.
Use/Production. (S) Site-limited destructive use (chemical intermediate). Prod. range: 500 to 900 kg/yr.

P 87-703

Importer. Danichiseika Color & Chemicals America, Inc.
Chemical. (S) Butanamide, 2-[(2,3-dihydro-1,3-dioxo-1H-isoindol-5- yl)azo]-N-(2,4-dimethylphenyl)-3-oxo-.
Use/Production. (S) Colorant for packaging gravure ink, water based dispersion, printing ink and paint, and rubber. Prod. range: 2,000 to 5,000 kg/yr.

P 87-704

Manufacturer. Confidential.
Chemical. (G) Polymer of a dibasic acid with an alkanetriol.
Use/Production. (G) Industrially used coating. Prod. range: 10,000 to 100,000 kg/yr.

P 87-705

Importer. Confidential.
Chemical. (G) Ferrocenium phosphate salt.
Use/Import. (S) Industrial cationic photoinitiator in UV cured coatings and synergist with acetophenone-based photoinitiator in print plate and printed circuit board applications. Import range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: <2,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Non-sensitizer; Ames test: Negative; LC_{50} 96 hr (Zebra fish): >100 ppm; Nucleus anomaly test (Chinese hamsters): Negative; EC_{50} 24 hr (Daphnia magna): 23 ppm; V79 Chinese hamster paint mutation test: Negative.

P 87-706

Importer. Confidential.
Chemical. (G) Monosubstituted aryl fatty acid ester.
Use/Import. (G) Detergent, bleaching, and household cleaning additive. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Moderate, Eye—Corrosive; Skin sensitization: Non-sensitizer.

P 87-707

Manufacturer. Radiant Color Company, Incorporated.
Chemical. (G) Poly (ester-amide).
Use/Production. (G) Plastic and paint or ink additive. Prod. range: 5,500 to 12,000 kg/yr.

P 87-708

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Organo polysiloxane.

Use/Import. (S) Industrial ingredient for adhesive and release agent for paper. Import. range: 500 to 2,000 kg/yr.

P 87–709

Importer. Confidential.
Chemical. (G) Aliphatic ester.
Use/Import. (S) Industrial drying accelerator for polyester coatings. Import. range: 680 to 5,000 kg/yr.

P 87–710

Manufacturer. Reilly Tar and Chemical Corporation.
Chemical. (G) Amine salt, aqueous solution.
Use/Production. (G) Intermediate.

P 87–711

Manufacturer. NL Chemicals Industries, Incorporated
Chemical. (G) High solids oxirane/anhydride polyester.
Use/Production. (G) A polyester resin to be used in an open, non-dispersive manner. Prod. range: Confidential.

P 87–712

Manufacturer. Cavedon Chemical Company, Incorporated.
Chemical. (G) Oleophilic functional zircoaluminate chloride hydroxide.
Use/Production. (S) Industrial adhesion promoter/pigment dispersant in industrial coatings, i.e., polyester, epoxy, urethane, alkyd, waterborne, etc., pigment dispersant coupling agent in pigmented PE, PP and other thermoplastics. Prod. range: Confidential.

P 87–713

Manufacturer. Confidential.
Chemical. (G) Cyclic amide-aldehyde polymer.
Use/Production. (S) Industrial paper coating processing auxilliary. Prod. range: 450,000 to 2,000,000 kg/yr.
Toxicity Data. Acute oral: 500 mg/kg; Irritation: Skin— Non-irritant, Eye— Non-irritant.

P 87–714

Manufacturer. Westvaco Corporation.
Chemical. (G) Carboxyethylated complex tall oil polyalkylene polyamine.
Use/Production. (G) Asphalt emulsifier. Prod. range: Confidential.
Toxicity Data. Acute oral: 7.4 g/kg; Irritation: Skin—Non- irritant, Eye— Irritant; Skin sensitization: Non-sensitizer.

P 87–715

Manufacturer. Westvaco Corporation.
Chemical. (G) Carboxyethylated complex tall oil polyalkylene polyamine.
Use/Production. (G) Asphalt emulsifier. Prod. range: Confidential.
Toxicity Data. Acute oral: 7.4 g/kg; Irritation: Skin—Non- irritant, Eye— irritant: Skin sensitization: Non-sensitizer.

Dated: March 5, 1987.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 87–5563 Filed 3–19–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59809; FRL–3168–8]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such polymer exemption submissions and provides a summary of each.

DATES: Close of Review Period:
Y 87–119 and 87–120—March 22, 1987.
Y 87–121—March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–119

Manufacturer. Sybron Chemicals Inc.

Chemical. (G) Copolymer of aliphatic esters of 2-propenoic acid with homocyclic and heterocyclic aromatic vinyl compounds, reaction products with aliphatic polyamines.
Use/Production. (G) Aqueous and non-aqueous waste and process purification. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg.

Y 87–120

Manufacturer. Sybron Chemical, Inc.
Chemical. (G) Copolymer of aliphatic esters of 2-propenoic acid with homocyclic and heterocyclic aromatic vinyl compounds.
Use/Production. (G) Aqueous and non-aqueous waste and process liquid purification. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg.

Y 87–121

Manufacturer. Emery Chemicals.
Chemical. (S) Adipic acid, polyester with 1,4-butanediol, propylene glycol, and coconut fatty acids.
Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 200,000 to 500,000 kg/yr.

Dated: March 6, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–5564 Filed 3–19–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Coastal Broadcasting Foundation and School, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Coastal Broadcasting Foundation and School, Inc., Avalon, CA.	BPED–841231MP	87–48
B. Family Stations, Inc., Avalon, CA.	BPED–850826ME	
C. City of Avalon, California Community Services Department, Avalon, CA.	BPED–850826MG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Contingent Environmental Impact, A, B
2. Air Hazard, B
3. Financial Qualifications, A, C
4. Comparative—Noncommercial, A, B, C
5. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–6098 Filed 3–19–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Family Stations, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Family Stations, Inc., Tarpon Springs, Fl.	BPED–831212AH	87–51
B. Florida Christian Education Association, Inc., Tarpon Springs, Fl.	BPED–8405161E	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 F.R. 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading., Applicant(s)

1. Comparative-Noncommercial Educational FM, A, B
2. Ultimate, A, B

3. If there is any non-standard issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–6099 Filed 3–19–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; A. Geri E. Ross et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Geri E. Ross, Ridgebury, PA.	BPH–860117ML	87–52
B. Fitzgerald, Coleman and Krawetz, Partnership, Ridgebury, PA.	BPH–860123MJ	
C. Area Youth for Christ Radio, Inc., Ridgebury, PA.	BPH–860123MK	
D. MarKey Broadcasting Company, Inc., Ridgebury, PA.	BPH–860123ML	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicants

1. Air Hazard, A, C
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–6100 Filed 3–19–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Metroplex Communications, Inc. (WHYI–FM) et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station and for renewal of license of an existing FM station:

Applicant, City and State	File No.	MM Docket No.
A. Metroplex Communications, Inc. (WHYI–FM), Ft. Lauderdale, Florida.	BRH–860801YJ	87–50
B. Southeast Florida Broadcasting Limited Partnership, Ft. Lauderdale, Florida.	BPH–86103OMH	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, N.W.,

Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–6101 Filed 3–19–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket Nos.: FEMA–REP–5–MI–4]

The Michigan Radiological Emergency Response Plan Site-Specific for the Enrico Fermi Atomic Power Plant, Unit II; Certification of FEMA Findings and Determination

ACTION: Certification of FEMA Findings and Determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of Michigan formally submitted its plans relating to the Enrico Fermi Atomic Power Plant, Unit II, to the Director of FEMA Region V on March 22, 1982, for FEMA review and approval. On January 11, 1983 Monroe County wrote the FEMA Region V Regional Director taking exception to the State of Michigan formally submitting to FEMA Region V their request for the Regional Director's evaluation of State and local plans for the Enrico Fermi Atomic Power Plant, Unit II. The State and local plans were revised and on October 15, 1985 the State of Michigan in compliance with 44 CFR 350 again requested a formal review and approval of the State and local emergency plan for the Enrico Fermi Atomic Power Plant, Unit II. On May 5, 1986, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with section 350.11 of the FEMA rule. Included in the May 5, 1986, evaluation is a review of full scale exercises conducted on February 2–3, 1982, and June 26–27, 1984, in accordance with section 350.9 of the FEMA rule; and, a report of the public meeting held on April 28, 1982, to discuss the site-specific aspects of the State and local plans in accordance with section 350.10 of the FEMA rule. In addition FEMA Region V is evaluating an exercise conducted on October 22, 1986, and preliminary reports indicate that there were no Deficiencies observed at the exercise.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the Enrico Fermi Atomic Power Plant, Unit II, are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The public alert and notification (A&N) system is in place, operational and was approved on November 28, 1984, by FEMA through its verification of the A&N system in accordance with the criteria of Appendix 3 of NUREG–0654/FEMA–REP–1, Rev. 1; and, FEMA–REP–43, "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants" (now published as FEMA–REP–10).

FEMA will continue to review the status of offsite plans and preparedness associated with the Enrico Fermi Atomic Power Plant, Unit II, in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–5–MI–4 maintained by the Regional Director, FEMA Region V, 300 South Wacker Drive, 24th Floor, Chicago, IL 60606.

For the Federal Emergency Management Agency.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs Support.

[FR Doc. 87–6057 Filed 3–19–87; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Baybanks, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or funfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 8, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BayBanks, Inc.*, Boston, Massachusetts; to engage *de novo* through its subsidiary, BayBanks Systems, Inc., Waltham, Massachusetts, in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means and, incident thereto, to provide automated teller machine maintenance services to unaffiliated financial institutions participating in the X-Press 24 network of automated teller machines, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–6104 Filed 3–19–87; 8:45 am]

BILLING CODE 6210–01–M

Baybanks, Inc. et al., Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 3, 1987.

A . **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BayBanks, Inc.*, Boston Massachusetts; to acquire New England EFT Switch, Inc., Boston, Massachusetts, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation*, Summit, New Jersey; to acquire National Machine Tool Finance Corporation, Bridgewater, New Jersey, and thereby engage in secured equipment lease transactions pursuant to § 225.25(b)(5) of the Board's Regulation Y, and appraising personal property pursuant to § 225.25(b)(13) of the Board's Regulation Y.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to acquire Alliance Insurance Inc., Danville, Indiana, and Insurance Department of Anderson Banking Company, Anderson, Indiana, and thereby indirectly engage in the business of general insurance activities for all lines of fire and casualty coverage through its wholly-owned subsidiary, Mid State Bank of Hendricks County, Danville, Indiana, pursuant to Exemption D of the Garn-St Germain Depository Institutions Act of 1982 and § 225.25(b)(8)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-6105 Filed 3-19-87; 8:45 am]

BILLING CODE 6210-01-M

Connecticut Bancorp, Inc. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 9, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Connecticut Bancorp, Inc.*, Norwalk, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Norwalk Bank, Norwalk, Connecticut a *de novo* bank.

2. *Norstar Bancorp, Inc.*, Albany, New York; to acquire 100 percent of the voting shares of Syracuse Savings Bank, Syracuse, New York. Syracuse Savings Bank operates a savings bank life insurance department as an adjunct to Syracuse Savings Bank. The savings bank life insurance department issues low cost savings bank life insurance policies and life annuities. Comments on this application must be received by March 30, 1987.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Rainbow Investment Company, Inc.*, Tuckerman, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Tuckerman, Tuckerman, Arkansas.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *K. Roberts, Inc.*, Hendrum, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Viking Bank, Hendrum, Minnesota.

Board of Governors of the Federal Reserve System, March 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-6106 Filed 3-19-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under Review by the Office of Management and Budget

The agency is asking the Office of Management and Budget (OMB) to review an expiring information collection (report) for possible extension.

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Under the Paperwork Reduction Act of 1980, GSA requests the OMB to extend an expiring report, GSAR, Part 523, Environment, Conservation, and Occupational Safety.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION TELEPHONE: Joseph Spagnola, Office of Acquisition Policy (202) 523–4768.

Purpose: Contractors must identify hazardous or toxic substances being shipped and give information about how they are being shipped.

Annual Reporting Burden: Firms responding, 1,590; responses per firm, 1; burden hours, 530.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566–0668.

Dated: March 11, 1987.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 87–6018 Filed 3–19–87; 8:45 am]

BILLING CODE 6820–61–M

Agency Information Collection Activities Under Review by the Office of Management and Budget (OMB)

AGENCY: Office of Acquisition Policy, GAS.

ACTION: Under the Paperwork Reduction Act of 1980, GSA requests the OMB to extend an expiring report, GSAR, Part 515, Contracting by Negotiation.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Richard F. Sanders, Office of Acquisition Policy, (202) 523–4740.

Purpose: When they submit offers, contractors must give the agency the number assigned to them for their address, so it can be entered in the Procurement Data System.

Annual Reporting Burden: Businesses responding, 90,945; responses, 90,945; burden hours, 7,579.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566–0668.

Dated: March 11, 1987.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 87–6019 Filed 3–19–87; 8:45 am]

BILLING CODE 6820–61–M2

Agency Information Collection Activities Under Review by the Office of Management and Budget (OMB) for Possible Extension

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Under the Paperwork Reduction Act of 1980, GSA requests the OMB to extend an expiring report, GSAR, Part 510, specifications, standards and other purchase descriptions.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Director of Regulations (202) 566–1224.

Purpose: Offerors must indicate that a product offered is equal to a brand name product. The intent is to increase competition.

Annual Reporting Burden: Firms reporting, 3,201; responses per firm, 1; total yearly responses, 3,201; burden hours, 533.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566–0668.

Dated: March 11, 1987.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 87–6020 Filed 3–19–87; 8:45 am]

BILLING CODE 6820–61–M

Extension of Agency Information Collection Activities by the Office of Management and Budget (OMB)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Under the Paperwork Reduction Act of 1980, GSA asks the OMB to extend an expiring information collection, GSAR, Part 537, Service Contracting.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, Office of Acquisition Policy, GSA (202) 523–4765.

Purpose: Contractors must submit information so the agency can decide whether they are financially and otherwise qualified.

Annual Reporting Burden: Businesses responding, 2,200; responses 2,200; burden hours, 2,200.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566–0668.

Dated: March 12, 1987.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 87–6021 Filed 3–19–87; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

The Office of Management and Budget (OMB) is Being Asked by GSA to Extend an Expiring Information Collection

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Under the Paperwork Reduction Act of 1980, GSA asks the OMB to extend an expiring information collection, GSAR, Part 528, Bonds and Insurance.

ADDRESSES: Send comments to Bruce McConnell , GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of Acquisition Policy, GSA (202) 566–1224.

Purpose: The information is needed to ensure that Government losses will be covered if an individual or a firm fails to perform the contract.

Annual Reporting Burden: Firms or persons responding, 600; responses per year, 600; burden hours, 1,200.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566–0668.

Dated: March 12, 1987.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 87-6022 Filed 3-19-87; 8:45 am]

BILLING CODE 6820-61-M

Agency Information Collection Being Revised by the Office of Management and Budget (OMB) for Extension

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Under the paperwork Reduction Act of 1980, GSA requests the OMB to extend an expiring information collection, GSAR, Part 512, Contract Delivery or Performance.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Richard F. Sanders, Office of Acquisition Policy (202) 523-4740.

Purpose: A notice of shipment is often needed so that storage can be prepared when supplies are being delivered or when installation must be coordinated with delivery of equipment.

Annual Reporting Burden: Burden hours, 242.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566-0668.

Dated: March 12, 1987.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 87-6023 Filed 3-19-87; 8:45 am]

BILLING CODE 6820-61-M

Agency Information Collection Being Reviewed by the Office of Management and Budget To See if It Should Be Extended

ACTION: Under the Paperwork Reduction Act of 1980, GSA requests the OMB to extend an expiring information collection, GSAR, Part 525, Foreign Acquisition.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of Acquisition Policy, GSA (202) 566-1224.

Purpose: Offerors must state whether items are foreign-source end products and state the import duty for each of them, to comply with limits in GSA and DOD appropriation acts.

Annual Reporting Burden: Business responding, 4,500; annual responses, 4,500; burden hours, 750.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566-0668.

Dated: March 12, 1987.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 87-6024 Filed 3-19-87; 8:45 am]

BILLING CODE 6820-61-M

Agency Information Collection Being Reviewed by the Office of Management and Budget (OMB)

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Under the Paperwork Reduction Act of 1980, GSA requests the OMB to extend an expiring information collection, GSAR, Part 514, Sealed Bids.

ADDRESS: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC. 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Regulations Director, Office of Acquisition Policy, GSA (202) 566-1224.

Purpose: The agency solicits sealed bids for items that cannot be supplied by any one contractor within the time specified and awards orders to successive contractors that have answered the solicitation until its needs are met.

Annual Reporting Burden: Estimated as follows: Businesses responding, 18,110; response, 18,110; burden hours, 3,018.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566-0668.

Dated: March 11, 1987.

Michael G. Barbour,

Director Information Management Division.

[FR Doc. 87-6084 Filed 3-19-87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 13, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for copies of Package)

Food and Drug Administration

Subject: Hepatitis Reporting Requirements—21 CFR 610—Revision—(0910-0136)

Respondents: Businesses or other for-profit

Subject: Petitions for Affirmation of Generally Recognized as Safe (GRAS) Substances—Extension—(0910-0132)

Respondents: Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations

Subject: Evaluation of the FDA Drug Bulletin Readership Survey—NEW

OMB Desk Officer: Shannah Koss

Social Security Administration (SSA)

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

Subject: Partnership Questionnaire—Extension—(0960-0025)

Respondents: Individuals or households; Businesses or other for-profit; Small businesses or organizations

OMB Desk Officer: Judy Egan.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS/FDA: 202-245-2100

SSA: 301-594-5706

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer).

Dated: March 13, 1987.

James F. Trickett,

Director, Office of Administrative and Management Services.

[FR Doc. 87-5933 Filed 3-19-87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84F-0409]

H.B. Fuller Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to future filing of a petition proposing that the food additive regulations be amended to provide for the safe use of sodium 2-hydroxy-3-(2-propenyloxy)-1-propanesulfonic acid monomer as a reactant to manufacture copolymers for use in adhesives.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 29, 1985 (50 FR 3979), FDA published a notice that it had a petition (FAP 5B3832) from the H.B. Fuller Co., 1200 Wolters Blvd., Vadnais Heights, MN 55110, that proposed to amend the food additive regulations to provide for the safe use of sodium 2-hydroxy-3-(2-propenyloxy)-1-propanesulfonic acid monomer as a reactant to manufacture copolymers for use in adhesives for food packaging. The H.B. Fuller Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 6, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-6005 Filed 3-19-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0016]

International Drug Scheduling; Convention on Psychotropic Substances; Propylhexedrine

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, medical usefulness, and trafficking of propylhexedrine. The U.S. Government has informed the Secretary-General of the United Nations that it believes propylhexedrine should be deleted from Schedule IV of the 1971 Convention on Psychotropic Substances (the Convention) without transferring it to any other schedule annexed to the Convention. The information submitted in response to this notice will be forwarded to the United Nations to assist it in the further evaluation of this proposed action. This notice requesting information is required by the Controlled Substances Act (21 U.S.C. 811 et seq.).

DATE: Comments by May 19, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the Convention. Article 2 of the Convention provides that if the World Health Organization (WHO) has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. Section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(A) provides that when WHO notifies the United States under Article 2 of the Convention that WHO has information that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS must then publish the notice in the Federal Register and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance.

The Secretary of HHS has received note NAR/CL.10/1986 dated November 17, 1986. This notice which is reproduced below proposes to delete the drug substance propylhexedrine from Schedule IV of the Convention without transferring it to any other schedule annexed to the Convention. The contents of the notice are as follows:

United Nations—Nations Unies

[Reference: NAR/CL.1Q/1986, DND 421/12(1-35/36), DND 411/1(2) WHO/ECDD 25]

[The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America] and has the honour to inform the Government that pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, the Government of the United States of America has informed him that it is of the opinion that *d1*-1-cyclohexyl-2-methyllaminopropane (hereinafter referred to as propylhexe-drine), which is presently in Schedule IV of the Convention, should be deleted from that schedule, without transferring it to any other schedule annexed to that Convention.

In accordance with the provision of article 2, paragraph 2, of the

. . . Convention, the Secretary-General hereby transmits the notification in question as annex I to the present note. The information submitted by the Government of . . . the United States in support of that notification is reproduced as annex II.

The present notification has also been transmitted to the World Health Organization pursuant to article 2, paragraph 2, of the Convention, for consideration by the 25th WHO Expect Committee of Drug Dependence which is expected to examine this proposed amendment in April 1988. Under the new review procedures adopted by WHO, the WHO Expert Committee of Drug Dependence is responsible for making scheduling recommendations to the Director-General of WHO.

Any recommendation made by the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraph 5 and 6, of the Convention, will be notified to States Parties in due course. Article 2, paragraph 5 and 6, read as follows:

"5. The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1, relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules."

In order to assist WHO is the examination of this proposal, WHO would be greatly helped in its task if it had available certain additional data concerning propylhexedrine. In this connection the Secretary-General would appreciate it if the Government would submit data on propylhexedrine following . . . the outline contained in the questionnaire attached to the present note as annex III.

In view of the fact that data provided by Governments will be used by WHO in the preparation of a review document in the fall of 1987, it would be very much appreciated if any comments which the Government may wish to make with respect to the proposed amendment could be sent to the Secretary-General at the very earliest possible date, but in any event not later than 30 June 1987. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A-1400 Vienna.

17 November 1986

ANNEX I—Notification Under Article 2, Paragraph 1, of the 1971 Convention on Psychotropic Substances

Subject: Deletion of a substance from the Schedules annexed to the Convention

The Government of the United States of America, being a Party to the 1971 Convention of Psychotropic Substances, refers to the following substance which is at present listed in Schedule IV of the 1971 Convention of Psychotropic Substances:

Propylhexedrine

The Government has information relating to the above substance which, in the Government's opinion, may require the deletion of that substance from the Schedule in which it is at present listed, without transferring it to any other Schedule annexed to that Convention.

The Government of the United States of America transmits this notification to the Secretary-General of the United Nations, in accordance with paragraph 1 of article 2 of the 1971 Convention on Psychotropic Substances, in order to initiate the procedure provided for under that article.

The relevant information in support of this notification is annexed hereto.

United States of America

21 August 1986

(Signed) Otis R. Bowen,

Secretary, Department of Health and Human Services.

ANNEX II—Information in support of Article 2, Paragraph 1, Notification

In Support of its notification on the subject of deletion of propylhexedrine from Schedule IV of the 1971 Convention on Psychotropic Substances, the Government of the United States of America adds the following:

1. Propylhexedrine has a lower abuse potential and is less potent than other Schedule IV substances.

2. Propylhexedrine is not is demand on the illicit market. There have been very few reported seizures of this drug and the number of dosage units per seizure has been low.

3. The twenty-year experience of the United States with propylhexedrine has failed to show that it is significantly abused, despite being available as the active ingredient in a non-prescription, over-the-counter nasal decongestant. The United States Food and Drug Administration, in approving propylhexedrine for use in over-the-counter medications, found it to be safe and effective and determined that there was no need for the imposition of domestic controls or prescription requirements.

4. The above shows that propylhexedrine is neither abused now nor is likely to be abused in such a manner as to constitute a significant public health and social problem that justifies international control. Therefore, international control is not in conformity with the requirements of article 2, paragraph 4(b), of the treaty. Failure to meet the requirements and objectives of the treaty is adequate reason to decontrol.

5. Scheduling of a substance that does not meet the requirements of the treaty undermines the importance of the treaty.

ANNEX III—United Nations Division of Narcotic Drugs

Vienna International Centre, A-1400 Vienna, Austria

Questionnaire for Data Collection for Use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

Substance Reported on: *Propylhexedrine*

1. Availability of the substance (registered, marketed, dispensed, etc.).

2. Extent of abuse of the substance.

3. Degree of seriousness of the public health and social problems* associated with abuse of the substance.

4. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.

5. Indentification of the seized substance as of local or foreign manufacture and indication of any commercial markings.

6. Existance of clandestine laboratories manufacturing the substance.

Data and information received by FDA on behalf of HHS in response to this notice will be used to prepare supplemental scientific and medical information concerning propylhexedrine in addition to that previously provided by the United States to WHO. HHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend the change proposed in the petition to delete propylhexedrine from Schedule IV of the Convention without transferring to any other schedule annexed to the Convention.

Upon receipt of the information HHS will not make any recommendation concerning the proposed action. Rather, HHS will defer such consideration until WHO has made an official recommendation to the Commission on Narcotic Drugs concerning the future schedule status of propylhexedrine. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before May 19, 1987, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910-0226.

Dated: March 12, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-6004 Filed 3-19-87; 8:45 am]

BILLING CODE 4160-01-M

*Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behavior problems, criminality, etc. For a thorough examination of the question please refer to the WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 656 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances".

[Docket No. 87N-0015]

International Drug Scheduling; Convention on Psychotropic Substances; Pyrovalerone

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, medical usefulness, and trafficking of pyrovalerone. The U.S. Government has informed the Secretary-General of the United Nations that it believes pyrovalerone should be deleted from Schedule IV of the 1971 Convention on Psychotropic Substances (the Convention) without transferring it to any other schedule annexed to the

Convention. The information submitted in response to this notice will be forwarded to the United Nations to assist it in the further evaluation of this proposed action. This notice requesting information is required by the Controlled Substances Act (21 U.S.C. 811 et seq.).

DATE: Comments by May 19, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The United States is a party to the Convention. Article 2 of the Convention provides that if the World Health Organization (WHO) has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. Section 201(d)(2)(A) of the Control Substances Act (21 U.S.C. 811(d)(2)(A) provides that when WHO notifies the United States under Article 2 of the Convention that WHO has information that may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance.

The Secretary of HHS has received note NAR/CL.11/1986 dated November 18, 1986. This notice which is reproduced below proposes to delete the drug substance pyrovalerone from Schedule IV of the Convention without transferring it to any other schedule annexed to the Convention. The contents of the notice are as follows:

United Nations—Nations Unies

[Reference: NAR/CL.11/1986, DND 421/12(1–35/36), DND 411/1(2) WHO/ECDD 25]

[The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America] and has the honour to inform the Government that pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, the Government of the United States of America has informed him that it is of the opinion that *d1*-1–(4-methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone (hereinafter referred to as pyrovalerone), which is presently in Schedule IV of the Convention, should be deleted from that schedule, without transferring it to any other schedule annexed to that Convention.

In accordance with the provisions of article 2, paragraph 2, of the . . . Convention, the Secretary-General hereby transmits the notification in question as annex I to the present note. The information submitted by the Government of . . . . the United States in support of that notification is reproduced as annex II.

The present notification has also been transmitted to the World Health Organization by the 25th WHO Expert Committee on Drug Dependence which is expected to examine this proposed amendment in April 1988. Under the new review procedures adopted by WHO, the WHO Expert Committee on Drug Dependence is responsible for making scheduling recommendations to the Director-General of WHO.

Any recommendation made by the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraphs 5 and 6, of the Convention, will be notified to States Parties in due course. Article 2, paragraphs 5 and 6, read as follows:

"5. The Commission, taken into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information form the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1 relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one schedule to another or to delete in from the Schedules."

In order to assist WHO in the examination of this proposal, WHO would be greatly helped in its task if it had available certain additional data concerning pyrovalerone. In this connection the Secretary-General would appreciate it if the Government would submit data on pyrovalerone following . . . the outline contained in the questionnaire attached to the present note as annex III.

In view of the fact that data provided by Governments will be used by WHO in the preparation of a review document in the fall of 1987, it would be very much appreciated if any comments which the Government may wish to make with respect to the proposed amendment could be sent to the Secretary-General at the very earliest possible date, but in any event not later than 30 June 1987. Replies should be addressed to the attention of the Director of the Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A–1400 Vienna.

18 November 1986

ANNEX I—Notification Under Article 2, Paragraph 1, of the 1971 Convention on Psychotropic Substances

Subject: Deletion of a substance from the Schedules annexed to the Convention

The Government of the United States of America, being a Party to the 1971 Convention on psychotropic Substances, refers to the following substance which is at present listed in Schedule IV of the 1971 Convention on Psychotropic Substances:

Pyrovalerone

The Government has information relating to the above substance which, in the Government's opinion, may require the deletion of that substance from the Schedule in which it is at present listed, without transferring it to any other Schedule annexed to that Convention.

The Government of the United States of America transmits this notification to the Secretary-General of the United Nations, in accordance with paragraph 1 of article 2 of the 1971 Convention on Psychotropic Substances, in order to initiate the procedure provided for under that article.

The relevant information in support of this notification is annexed hereto.

United States of America

21 August 1986

(Signed) Otis R. Bowen,

Secretary, Department of Health and Human Services.

ANNEX II—Information in Support of Article 2, Paragraph 1, Notification

In supoprt of its notification on the subject of deletion of pyrovalerone from Schedule IV of the 1971 Convention on Psychotropic Substances, the Government of the United States of America adds the following:

1. No data on the dependence potential of pyrovalerone are known to be available.

2. No clinical or pre-clinical data are known to be available from which the abuse liability of pyrovalerone could be extrapolated.

3. There are no data on international illicit trafficking in pyrovalerone.

4. There are no date showing that pyrovalerone is abused at a level detectable by current information gathering systems.

5. Pyrovalerone is currently marketed in only one country—Luxembourg.

6. The manufacturer of pyrovalerone has not made any data available to the public or transmitted any data to WHO.

7. The above shows that pyrovalerone is neither abused now nor is likely to be abused in such a manner as to constitute a significant public health and social problem that justifies international control. Therefore, international

control is not in conformity with the requirements of article 2, paragraph 4(b), of the treaty. Failure to meet the requirements and objectives of the treaty is adequate reason to decontrol.

8. Scheduling of a substance that does not meet the requirements of the treaty undermines the importance of the treaty.

ANNEX III—United Nations Division of Narcotic Drugs

Vienna International Center, A–1400 Vienna, Austria

Questionnaire for Data Collection for Use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

Substance Reported On: *Pyrovalerone*

1. Availability of the substance (registered, marketed, dispensed, etc.).
2. Extent of abuse of the substance.
3. Degree of seriousness of the public health and social problems* associated with abuse of the substance.
4. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.
5. Identification of the seized substance as of local or foreign manufacture and indication of any commercial markings.
6. Existence of clandestine laboratories manufacturing the substance.

Data and information received by FDA on behalf of HHS in response to this notice will be used to prepare supplemental scientific and medical information concerning pyrovalerone in addition to that previously provided by the United States to WHO. HHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend the change proposed in the petition to delete pyrovalerone from Schedule IV of the Convention without transferring to any other schedule annexed to the Convention.

Upon receipt of the information HHS will not make any recommendation concerning the proposed action. Rather, HHS will defer such consideration until WHO has made an official recommendation to the Commission on Narcotic Drugs concerning the future schedule status of pyrovalerone. Any HHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

*Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behaviour problems, criminality, etc. For a thorough examination of the question please refer to the WHO publication entitled "Assessment of Public Health and Social Problems Associated with the Use of Psychotropic Drugs" (No. 656 in the WHO Technical Report Series) and Chapter 7 of the WHO publication entitled "Guidelines for the Control of Narcotic and Psychotropic Substances".

Interested persons may, on or before May 19, 1987, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910–0226.

Dated: March 12, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–6006 Filed 3–19–87; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis Advisory Board and its subcommittees on April 12 and 13, 1987. The subcommittees will meet April 12, 6 p.m. to adjournment, and the full Board will meet April 13, 8:30 a.m. to approximately 12 noon, at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: March 13, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–6008 Filed 3–19–87; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; National Advisory Eye Council, Vision Research Program Planning Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council Vision Research Program Planning Subcommittee, National Eye Institute, April 20, 1987, Building 31, Conference Room 6A35, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public from 1 p.m. until adjournment to discuss the Biennial National Plan. Attendance by the public will be limited to space available.

Mr. Julian Morris, Associate Director for Planning and Reporting, National Eye Institute, Building 31, Room 6A27, National Institutes of Health, Bethesda, Maryland 20892, (301) 493–4308, will provide a summary of the meeting, a roster of the committee members, and substantive program information upon request.

Dated: March 13, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–6009 Filed 3–19–87; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, May 8, 1987, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 8, C Wing.

The entire meeting will be open to the public from 9:00 AM to adjournment on May 8, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, phone (301)

496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 13, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–6010 Filed 3–19–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting; Amendment

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors of the National Institute of Dental Research to be held on April 22–24, 1987, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland, which was published in the **Federal Register** on Friday, February 20, 1987, 52 FR 5345.

This Board of Scientific Counselors meeting was to have been held in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland, but has been changed to Conference Room 9, Building 31C, National Institutes of Health, on April 22–23, and Conference Room 132, Building 30, National Institutes of Health, on April 24.

The meeting will be open to the public from 9 a.m. to recess on April 22 and from 9 a.m. to 12 Noon on April 23. The meeting will be closed to the public from 1 p.m. to recess April 23 and from 9 a.m. to adjournment on April 24.

Dated: March 13, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–6011 Filed 3–19–87; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Center for Health Services Research and Health Care Technology Assessment; Assessment of the Role of Speech Pathologists Treatment of Dysphagia, 1987

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is seeking information in coordinating an assessment on the clinical effectiveness and indications for the role of speech pathologists in the treatment of dysphagia. Additionally, we are seeking recommendation for selection criteria for the identification of those dysphagic patients who might be treated by speech pathologists. Specifically, information is requested on whether speech pahtyology in the treatment of dysphagia is at present an accepted therapeutic modality for this indication. If so what guidelines for patient selection if any, and what program of therapy would be considered reasonable and necessary.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or a group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than June 18, 1987.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed clinical studies, information related to the clinical acceptablility and effectiveness of this technology, and a characterization of the patient population most likely to benefit from this technology in the treatment of dysphagia. Proprietary information is not being sought.

Written material should be submitted to: Richard S. Bodaness, M.D., Ph.D, Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A–27 Rockville, MD 20857, (301) 443–4990.

Date March 13, 1987.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center of Health Services Research and Health Care Technology Assessment.

[FR Doc. 87–6069 Filed 3–19–87; 8:45 am]

BILLING CODE 4160–17–M

National Commission on Orphan Diseases; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a forthcoming meeting of the National Commission on Orphan Diseases scheduled to meet on April 9 and 10, 1987.

DATE: Date, time and place: April 9, 1987, 9a.m.–5 p.m.; April 10, 1987, 9 a.m.–4 p.m., Conference Room 6, Building 31, C–Wing, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to: Stephen C. Groft, Pharm. D., Executive Director, National Commission on Orphan Diseases, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Room 18–38, Rockville, MD 20857, 301–443–6156.

Agenda: Open Public Hearing.

Interested persons may present data, information, or views orally or in writing on issues pending before the Commission or on any of the duties and responsibilities of the Commission in the open public session on April 9 at 4 p.m. Those desiring to make formal presentations should notify the contact person before March 27, 1987 and submit a brief statement of the information they wish to present to the Commission. Those requests should include the names and addresses of proposed participatnts and an indication of the approximate time requested to make their comments. Any person attending the meeting who does not request prior to the meeting an opportunity to speak may make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Commission Discussion: Discussion will center on the orphan disease research activities of the Public Health Service agencies, preparation of a workplan to guide the activities of the Commission, and a discussion of plans for public hearings by the Commission.

SUPPLEMENTARY INFORMATION: Pub. L. 99–91 (Orphan Drug Amendments of 1985) established the National Commission on Orphan National Institutes of Health (NIH), the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), The Food and Drug Administration (FDA), other public agencies, and private entities in connection with:

(1) Basic research conducted on rare diseases;

(2) The use in research on rare disease of knowledge developed in other research;

(3) Applied and clinical research on the prevention, diagnosis, and treatment of rare diseases; and

(4) The dissemination to the public, health care professionals, researchers, and drug and medical device manufacturers of knowledge developed in research on rare diseases and other diseases which can be used in the

prevention, diagnosis, and treatment of rare diseases.

Meetings of the Commission will be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda, if any, will be announced at the beginning of the meeting.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

This notice is issued under 10(a) (1) and (2) of the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix I).

Dated: March 13, 1987.

Robert E. Windom, M.D.,

Assistant Secretary for Health.

[FR Doc. 87–6070 Filed 3–19–87; 8:45 am]

BILLING CODE 4160–17–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Chlorinated Trisodium Phosphate

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of chlorinated trisodium phosphate. This chemical is used as a cleaner and bacteriocide in dairies and food processing plants and as a component of dishwashing compounds, scouring powders, denture cleaners, and laundry bleaches.

Toxicology and carcinogenesis studies of chlorinated trisodium phosphate were conducted by administering 0, 500, or 1,000 mg/kg of the chemical in water by gavage, 5 days per week for 103 weeks, to groups of 50 male and 50 female $B6C3F_1$ mice.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenicity [1] for either male or female $B6C3F_1$ mice given chlorinated trisodium phosphate by gavage in water for 103 weeks at doses of 50 or 1,000 mg. Survival of dosed female mice was 78% and 72% after 80 weeks and 32% and 42% at the termination of the study. The studies in male and female F344/N rats were considered to be inadequate studies of carcinogenicity because the experiments were terminated at 35 weeks due to poor survival.

Copies of *Toxicology and Carcinogenesis Studies of Chlorinated Trisodium Phosphate in $B6C3F_1$ Mice (Gavage Studies)* (TR 294) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991. FTS: 629–3991.

Dated: March 16, 1987.

David P. Rall,

Director.

[FR Doc. 87–6007 Filed 3–19–87; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–87–1685]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals

Comments should refer to the proposal by name and should be sent to: John F. Morrall, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Proposal: Schedule of Pooled Mortgage—Single Family Loans, Graduated Payment Loans, and Growing Equity Loans
Office: Government National Mortgage Association
Description of the Need For the Information and its Proposed Use: The form provides a means of identifying specific single family mortgages in the pool, and assures that all required mortgage and related documents have been delivered to a document custodian. This information is necessary to assure GNMA's interest in the pooled mortgages in the event of a default.
Form Number: HUD–11706
Respondents: Businesses or Other For-Profit
Frequency of Respondents: On Occasion
Estimated Burden Hours: 23,740
Status: Reinstatement
Contact: Patricia Gifford, HUD, (202) 755–5550, John F. Morrall, OMB, (202) 395–6880

Proposal: Real Estate Settlement Procedures
Office: Housing
Description of the Need for the Information And Its Proposed Use: Section 4 and Section 5 of the Real Estate Settlement Procedures Act requires lenders to provide borrowers a Special Information Booklet, Good

Faith Estimate of Settlement costs, and a form setting forth all settlement costs.
Form Number: HUD–1
Respondents: Businesses or Other For-Profit
Frequency of Response: On Occasion
Estimated Burden Hours: 867,500
Status: Reinstatement
Contact: Morris E. Carter, HUD, (202) 755–6720, John F. Morrall, OMB, (202) 395–6880

Proposal: Program Delivery Costs for Community Development Block Grant (CDBG) Single-Family Rehabilitation
Office: Community Planning and Development
Description of the Need for the Information And Its Proposed Use: Needed to determine acceptable program delivery costs in CDBG Single-Family housing rehabilitation programs for use in audits and evaluation of program management.
Form Number: None
Respondents: State or Local Governments
Frequency of Response: Single-Time
Estimated Burden Hours: 1,125
Status: New
Contact: Mary Ann Kolesar, HUD, (202) 755–5970, John F. Morrall, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: March 6, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87–6054 Filed 3–19–87; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records maintained by the Minerals Management Service (MMS). Except as noted below, all changes being published are editorial in nature, and reflect minor administrative revisions which have occurred since the publication of the material in the **Federal Register** on November 7, 1985 (50 FR 46357). The revised notice, which is titled "Telephone/Employee Locator System (TELS)—Interior, MMS–5" (formerly titled "ELC Records"), is published in its entirety below.

The notice is being revised to reflect that the records system also will contain information on contractor personnel, an expansion of the locations of the records to MMS's Administrative Service Centers, document two additional purposes for maintaining the records, and indicate that the records are now retrievable by the individuals' telephone numbers.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Director, Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget, in its Circular A–130, has established a 60-day period for review of this type of proposal. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received within 60 days of publication in the **Federal Register** will be considered. The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: March 11, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

Interior/MMS–5

SYSTEM NAME:

Telephone/Employee Locator System (TELS)—Interior, MMS–5.

SYSTEM LOCATION:

Procurement and General Services Division, Minerals Management Service, Mail Stop 635, 12203 Sunrise Valley Drive, Reston, Virginia 22091, and Administrative Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Minerals Management Service (MMS) employees Service-wide, and contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individual employees and contractor employees, social security numbers, grades, office telephone, building codes, room numbers, mail stop codes, tenures, work schedules, organization codes, and home zip codes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary uses of these records are: (1) To prepare MMS telephone directories; (2) ride sharing; (3) to prepare space occupancy reports; (4) to show change in employees position status and location; (5) to monitor telephone inventories. Disclosure outside of the Department may be made: (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purposes for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies resonsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal Agency which has requested information relevant or necessary to its hiring or retention of an employee or issuance of a security clearance, license, contact, grant, or other benefit; and (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual and computerized form.

RETRIEVABILITY:

By name or social security number or telephone number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and manual records.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Management Handbook, MMSM 380.2–H, 401–01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Facilities Management Section, General Services Branch, Procurement and General Services Division, Minerals Management Service, Mail Stop 635, 12203 Sunrise Valley Dr., Reston, Virginia 22091.

NOTIFICATION PROCEDURES:

A written and signed request stating that the expense seeks information concerning records pertaining to him or her must be addressed to the System Manager. See CFR 2.60.

RECORDS ACCESS PROCEDURES:

A request for access should be addressed to the System Manager. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Contact the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are kept.

[FR Doc. 87–6027 Filed 3–19–87; 8:45 am]
BILLING CODE 4310–MR–M

Bureau of Indian Affairs

Irrigation Operation and Maintenance Charges

This notice of operation and maintenance rates and related information is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs to the Area Directors in 10 BIAM 3. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and section 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9), and also under 25 CFR 191.1(e).

On January 2, 1987, in Vol. 52 No. 1 FR 168, there was published a notice of proposed assessment rates and related provisions on the Wapato Irrigation Project for Calendar Year 1987 and subsequent years until further notice. These assessment rates were proposed pursuant to the authority contained in the Acts of August 1, 1914, (38 Stat. 583), and March 7, 1928, (45 Stat. 210).

Interested persons were given 30 days in which to submit written comments, views or arguments regarding the proposed rates and related provisions. During this period comments, were submitted from the Yakima Confederated Tribes. The objections were primarily based on the lack of approprated funds for idle Indian lands. Careful evaluation of existing costs and consideration of no O&M increases in 1985 and 1986 shows an increase is required to meet current expenses. Therefore, the assessment rates and related provisions as set forth below are adopted effective 30 days after date of publication in the **Federal Register.**

Wapato Irrigation Project—General

Administration

The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

Irrigation Season

Water will be available for irrigation purposes from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

Request for Water Delivery and Changes

Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules.

Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Time for Payment of Water Charges

The assessments fixed by these regulations shall become due April 1 of each year and are payable on or before that date. To all charges assessed against lands in patent in fee ownership, and those paid by lessees of Indian lands directs to the project office, remaining unpaid on July 1 following the due date, there shall be added a penalty of one and one-half percent for each month, or fraction thereof, from the due date until the charges are paid.

No delivery of water will be made without payment or without satisfactory arrangements being made with the Project Engineer. If arrangements are made for delivery of water prior to payment, there will be an interest charge of one and one-half percent per month of fraction thereof, from the time of water delivery until payment is made.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1987 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report	$15.00
(2) Requests for Verification of Account Delinquency Status, Per report	10.00
(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee) Per Bill	10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill	10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report	10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee ($10.00)	
(7) Review of subdivision plats	10.00

Ahtanum Unit

Charges

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1987 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1987 and subsequent years until

further notice, is fixed at $7.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1987 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts	$25.95
(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands	25.95
(3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre	2.20
(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands	27.05

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied against all tracts of less than one acre.

Assessable Lands

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior, except land which has never been cultivated if in the opinion of the Project Engineer the cost of preparing such land for irrigation is so high as to preclude its being leased at this time for agricultural purposes.

(b) All Indian trust (A and B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

Wilford G. Bowker,

Acting Area Director.

[FR Doc. 87-6108 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[MT-930-07-4332-08]

Draft Centennial Mountains Wilderness Suitability Study and Environmental Impact Statement; Notice of Availability and Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of and Public Hearing on the Draft Centennial Mountains Wilderness Suitability Study and Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 603(a) of the Federal Land Policy and Management Act of 1976, the Department of Interior has prepared a Draft Centennial Mountains Wilderness Suitability Study and Environmental Impact Statement. The Butte District of the Bureau of Land Management is the lead agency for the environmental impact statement. The Beaverhead National Forest and the Targhee National Forest are cooperating agencies.

The Centennial Mountains study area covers 72,885 acres on the Montana/Idaho border. The proposed action recommends 26,248 acres in Montana as suitable for wilderness, and 4,597 acres in Montana and 42,040 acres in Idaho as nonsuitable for wilderness.

Public Participation: Written comments on the draft statement are invited and should be submitted by June 19, 1987, to: District Manager, Bureau of Land Management, P.O. Box 3388, Butte, MT 59702.

Public hearings will be held on June 2, 1987, at 7 p.m. at Jorgensons Holiday Motel in Helena, Montana; June 3, 1987, at 7 p.m. at the St. Rose Community Center in Dillon, Montana; and June 4, 1987, at 7 p.m. at the Eagle Rock Junior High School in Idaho Falls, Idaho. Individuals wishing to testify may do so by appearing at one of the hearing places previously specified. Persons wishing to give testimony will be limited to 10 minutes with written submissions invited. Prior to giving testimony at the public hearing, individuals or spokespersons are requested to contact the Butte District Manager.

FOR FURTHER INFORMATION CONTACT: James Moorhouse, District Manager, Butte District Office, Bureau of Land Management, P.O. Box 3388, Butte, MT 59702, Telephone (406) 494-5059.

SUPPLEMENTARY INFORMATION: Copies of the Draft Centennial Mountains Wilderness Suitability Study and Environmental Impact Statement are available at county libraries and from the following locations:

Butte District Office, Bureau of Land Management, 106 N. Parkmont, P.O. Box 3388, Butte, MT 59702, Telephone (406) 494-5059

Montana State Office, Bureau of Land Management, 222 N. 32nd Street, P.O. Box 36800, Billings, MT 59107, Telephone (406) 657-6561

Public Affairs, Bureau of Land Management, Interior Building, 18th and C Street, NW., Washington DC 20240, Telephone (202) 343-9435

Beaverhead National Forest, 610 N. Montana, Dillon, MT 59725, Telephone (406) 683-3900

Targhee National Forest, 420 N. Bridge Street, St. Anthony, ID 83445, Telephone (208) 624-3151.

Dean Stepanek,

State Director.

March 2, 1987.

[FR Doc. 87-4970 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-DN-M

[WY-040-07-4212-12; W-96315]

Availability Amendment to the Big Sandy Management Framework Plan

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability Amendment to the Big Sandy Management Framework Plan (MFP)/ Notice of Realty Action, Exchange of Public Lands, Sweetwater County, Wyoming.

SUMMARY: The BLM has amended the Big Sandy MFP to allow for the exchange of public lands for State land needed for recreational use. The following described public lands have been examined through the land use planning process and they are suitable for exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian, Wyoming

T. 22 N., R. 102 W.,
Sec. 36, E½, E½W½.

Containing 480 acres, more or less.

In exchange for these lands, the United States will acquire from the State of Wyoming lands described as:

Sixth Principal Meridian, Wyoming

T. 23 N., R. 103 W.,
Sec. 16, all.

Containing 640 acres, more less.

The value of the lands to be exchanged is approximately equal and the acreage will be adjusted if necessary to equalize values upon completion of the final appraisal.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All valid existing rights to include the State of Wyoming oil and gas lease No. 83-186.

There will be no cancellation of existing Federal grazing rights.

The planning document and environmental assessment/land report covering the proposed exchange are available for review at the Bureau of Land Management, Rock Springs District Office.

FOR FURTHER INFORMATION CONTACT: Teresa Deakins (Realty Specialist), (307) 362-6422.

For a period of 45 days from the date this notice is published in the **Federal Register**, any party that participated in the plan amendment and is adversely affected by the amendment may protest this action in accordance with 43 CFR 1610.5-2 only as it affects issues submitted for the record during the planning process.

For a period of 45 days from the date this notice is published in the **Federal Register**, interested parties may submit comments on the exchange to the District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82901. Any adverse comments to the exchange proposal will be evaluated by the State Director, who may vacate or modify the realty action and issue a final determination. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Hillary A. Oden,

State Director.

[FR Doc. 87-6029 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-22-M

[MT-070-07-4322-01-ADVB]

Montana's Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Board will be held Wednesday, April 8 in the Butte District office conference room, 106 North Parkmont (Industrial Park), Butte, Montana. The meeting will begin at 9:00 a.m. The agenda will include (1) election of officers, (2) a discussion of how to handle permits, etc. for ranchers foreclosed, (3) range improvements, (4) FY 87 range program implementation, (5) weed control update and (6) a discussion of the district's participation as a pilot district in the Bureau's productivity pilot program.

The meeting is open to the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make statements to the board should make prior arrangements with the district manager.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

James A. Moorhouse,

District Manager.

March 11, 1987.

[FR Doc. 87-6031 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-DN-M

[CA-060-4410-04]

California Desert Advisory Council; Meeting; Time Change

AGENCY: Bureau of Land Management, Interior.

ACTION: Change in meeting time of the California Desert Advisory Council.

SUMMARY: Notice is hereby given that the meeting of the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, has been changed to 1:00 P.M. on Friday, April 10, 1987 rather than 10:00 A.M. as previously announced. The meeting will continue at 8:00 A.M. on Saturday, April 11, 1987, in the Crystal Room of the Greentree Inn, 14173 Green Tree Boulevard, Victorville, CA.

Dated: March 10, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 87-6055 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-40-M

[CO-050-07-4212-13; C-44109]

Realty Action; Exchange of Public Lands in Fremont and Park County, CO

AGENCY: Bureau of Land Management, Interior, Canon City District Office, Royal Gorge Resource Area.

ACTION: Notice of Realty Action, Exchange of public and private land in Fremont and Park Counties, Colorado, C-44109; and segregation from all forms of appropriation under the public land laws.

SUMMARY: The exchange proposal described below would acquire non-Federal lands which have significant public values for wildlife habitat, recreation, and livestock grazing. The subject lands are located in Fremont and Park Counties, Colorado.

DATE: Comments must be received on or before May 4, 1987.

ADDRESSES: Submit comments to: District Manager, Bureau of Land Management, Canon City District Office, 3080 E. Main, P.O. Box 311, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 1470, Canon City, Colorado. Phone: (303) 275-7578.

SUPPLEMENTARY INFORMATION: The following described public land has been determined to be suitable for disposal by exchange under section 206 of the "Federal Land Policy and Management Act of 1976", 43 U.S.C. 1716.

Sixth Principal Meridian

T. 18 S., R. 68 W. (Fremont County),
Sec. 26, NE¼NE¼, SW¼NE¼, SE¼NW¼;
Sec. 35, NE¼NE¼, NE¼SE¼.
T. 15 S., R. 73 W. (Park County),
Sec. 1, Lots 3, 16, 20, 23, and 24.

This totals approximately 200 acres in Fremont and 74.43 acres in Park Counties.

In exchange for these lands, the Federal Government will acquire the following described private lands from the One-One-Five Land Company:

Sixth Principal Meridian

T. 17 S., R. 69 W.,
Sec. 1, SW¼SW¼;
Sec. 2, SE¼SE¼;
Sec. 11, E½E½ less MS 18399;
Sec. 12, W½W½.

This totals approximately 385 acres in Fremont County.

The purpose of the land exchange is to acquire a private land in holding with public land on all or portions of all four sides. The private land to be acquired is adjacent to the proposed Beaver Creek Wilderness Area and has important recreation, wildlife, and livestock grazing values.

It is also beneficial to the public by disposing of small isolated parcels of public land that are expensive to manage and that are identified for disposal by the Royal Gorge Management Framework Plan. The fair market appraised values of the lands are approximately equal. Any difference after final appraisal will be equalized by acreage or cash adjustment.

The exchange will be subject to:

1. Exchange of access easements needed to provide legal access to all parcels.

2. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the U.S., Act of August 30, 1890 (43 U.S.C. 945).

3. The reservation to the United States of all minerals, together with the right of access, exploration, and development.

4. All valid existing rights, including, but not limited to, rights-of-way and leases of record.

The publication of this notice hereby segregates the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 87-6032 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-JB-M

[ID-030-07-4212-13; I-23057]

Realty Action; Idaho Falls District, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Land in Bingham County, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 1 S., R. 39 E., Boise Meridian,
Sec. 27: SE¼SW¼;
Sec. 33: SE¼SW¼;
Sec. 34: NW¼NW¼.

In exchange for these lands, the Federal Government will acquire scattered tracts of non-federal land in Bonneville, Fremont and Teton counties from the state of Idaho, described as follows:

T. 7 N., R. 44 E., Boise Meridian,
Sec. 11: NE¼SW¼.
T. 1 S., R. 40 E., Boise Meridian,
Sec. 13: SE¼NE¼, NW¼SE¼.

The purpose of the exchange is to acquire the non-federal lands for use in wildlife habitat management. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with county and state officials. The public interest will be well served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for county road purposes have been reserved for Bingham County.

3. Those rights for road purposes as have been granted to the Louisiana-Pacific Corp. under serial number I-20555.

4. Reserving to the United States a right to commercial timber harvest until September 23, 1989 under agreement dated September 29, 1986.

5. The United States reserves all minerals in the land subject to this conveyance, including, without limitation, substances subject to disposition under the general mining laws, the Materials Act and the Geothermal Steam Act.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Pocatello Resource Area Office; 250 South 4th Avenue, Federal Bldg., Rm. 172; Pocatello, Idaho 83201.

For a period of 45 days interested parties may submit comments to the Idaho Falls District Office, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: March 12, 1987.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 87-6033 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-GG-M

[ID-060-07-4212-24; I-23074]

Coeur d'Alene District, ID; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Proposed Occupancy Lease, Shoshone County, Idaho.

SUMMARY: The following public lands have been examined and found suitable for issuance of an occupancy lease under the provision of section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732):

Boise Meridian, Idaho

T.48N., R.4E.,
Sec. 21, W½SW¼NW¼NWSE¼NE¼
Containing 0.312 acres more or less.

The Bureau is proposing to issue a long-term occupancy lease which will be subject to the appropriate environmental protection stipulations to legalize an unauthorized use of the public lands by Ronald and Mary Panke. In 1979, the Pankes constructed a building for use as a guest house and gym. They employed a private surveyor to mark the boundaries of their private property, but had not had the easterly boundary adjoining public lands properly surveyed in accordance with Bureau cadastral survey procedures. When a cadastral survey of adjacent section 22 was completed, it was discovered that the building was located on public lands in section 21.

Since the use area is part of a relatively large tract of public lands which is listed in our land use plans as suitable for retention, a sale of the unauthorized use area is not in the best interest of the public. The Bureau considers a long-term occupancy lease to the Pankes to be an appropriate method for settling the trespass. A lease would cause the least impact to the lands and resources.

The proposed lease has been categorically excluded from the environmental assessment process.

The Bureau will now accept an application from the Pankes to be delivered to the address listed below.

Date: For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the address listed below. Any objection will be reviewed by the Idaho State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION: Detailed information concerning this proposal may be obtained by contacting Mert Lombard, Emerald Empire Area Manager, 1808 North Third St., Coeur d'Alene, ID 83814, (208) 765-7356.

Dated: March 13, 1987.

John B. O'Brien, III,

Acting District Manager.

[FR Doc. 87-6034 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-07-4212-14; N-42555]

Realty Action; Battle Mountain District, Tonopah Resource Area, NV

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Realty Action; Noncompetitive Sale of Federal Lands in Esmeralda County, NV.

SUMMARY: The following described federal lands have been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value.

Mount Diablo Meridian, Nevada

T. 1 S., R. 35 E.,
Sec. 28, SW¼SE¼.
A parcel of land containing 40 acres.

The lands will be offered for sale to the Arlemont Ranch Co., the adjacent landowner, which plans to use them for agricultural purposes. Conveyance of available mineral interest will occur simultaneously with the sale of the lands. Acceptance of the direct sale offer will constitute an application for conveyance of those mineral interests. The Arlemont Ranch Co. will be required to pay a $50.00 non-returnable filing fee for conveyance of available mineral interests. Failure to submit purchase money and the aforementioned non-returnable filing fee within the timeframe specified by the Authorized Officer shall result in cancellation of the sale.

The sale is consistent with the Bureau's planning system. The lands are not needed for any resource program. No conflicts with state or local plans are present. The grazing lessee has waived his rights to the two-year notification prescribed in section 402(g) of the Federal Land Policy and Management Act of 1976.

Minimum bid for this parcel will be fair market value which will be determined by an appraisal and which will be made available prior to the sale. Under no circumstances will this parcel be sold sooner than 60 days after publication of this Notice.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 [26 Stat. 391; 43 U.S.C. 945].

2. All oil and gas, sodium and potassium mineral deposits and geothermal resources.

A more detailed description of these reservations, which will be incorporated in the patent document, is available for review at the Battle Mountain District Office.

Segregation

Upon publication of this Notice in the **Federal Register** the above-described Federal lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to applications under the mineral leasing laws.

Comments

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P. O. Box 1420, Battle Mountain, NV 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 20, 1987.

Michael C. Mitchel,

Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 87-6035 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-HG-M

[NM-010-07-4212-13]

Realty Action; Albuquerque District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action on Proposed Land Exchange NM-65213.

SUMMARY: This notice is the advise that the following described public lands have been determined to be suitable for disposal through exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 17 N., R. 9 E.,
Section 16: Lot 10.
The area described amounts to 31.73 acres.
In exchange for these lands, the United States will acquire the following described lands from Mr. Alfonso Abeyta:

New Mexico principal meridian	Acres
T. 28 N., R. 11 E., Sec. 24: All	640.00
T. 30 N., R. 10 E., Sec. 13: S½NW¼	320.00
T. 30 N., R. 11 E.:	
Sec. 2: Lots 3,4	82.06
Sec. 22: SE¼SW¼, SW¼SE¼	80.00
Sec. 27: NE¼SW¼, NW¼SE¼, E½NW¼, W½NE¼	240.00
T. 31 N., R. 11 E.:	
Sec. 21: E½E½	160.00
Sec. 22: SE¼E½	480.00
Sec. 27: NE¼W½	480.00
Sec. 28: E½	320.00
Sec. 33: E½	320.00
Sec. 34: W½	320.00
Sec. 35: SW¼NE¼, NW¼SE¼, W½ (except for 62.06 acres)	337.94

The areas described amount to 3,780 acres.

The public land identified for disposal is located about one (1) mile west ot the City of Santa Fe, New Mexico and has high value for residential development. Due to small size and adjacent development, the public land receives little public use and is not leased for grazing. The private lands, located north and west of Taos, New Mexico, have high values for wildlife habitat, livestock grazing and public recreation in the form of hunting and hiking.

This exchange proposal is consistent with recommendation L-7.3 in the Rio Grande Management Framework Plan (MFP) and will not impact any local or Federal planning.

The value of the lands to be exchanged are approximately equal. Upon completion the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money or by other arrangements that would be in the public interest. Lands to be transferred from the United States will be subject to the following reservations:

1. All mineral deposits shall be reserved to the United States along with the rights to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1980 (26 Stat. 391; U.S.C. 945). Publication of this notice segregates the public land from the operation of all the public land laws, including the mining laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: For detailed information concerning the exchange including environmental assessment and land report is available for review at the Taos Resource Area Office, Plaza Montevideo Building, Cruz Alta Road, Taos, New Mexico, phone (505) 758-8851.

For a period 45 days from the date of this publication, interested parties may submit comments to the Albuquerque District Manager, 435 Montano N.E., Albuquerque, New Mexico, 87107.

March 11, 1987.

L. Paul Applegate,

District Manager.

[FR Doc. 87-6036 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-FB-M

[WY-040-07-4212-14; W82673]

Realty Action; Competitive Sale of Public Lands, Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Competitive Sale of Public Lands, Sweetwater County, Wyoming.

SUMMARY: The following described lands have been identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than fair market value:

Sixth Principal Meridian, Wyoming

Township 19 North, Range 105 West, Section 16

Parcel No.	Legal description	Acreage	Value
Parcel 1	1	41.74	$83,480
Parcel 2	3	40.90	81,800
Parcel 3	4	40.48	74,000
Parcel 4	17	20.66	41,320

DATES: On or before April 28, 1987, interested parties may submit comments on the sale.

The sale will be held May 14, 1987, at 2:30 P.M. MDT and sealed bids must be received in the Green River Resource Area Office by 11:00 A.M. MDT on May 13, 1987. Sealed bids will be opened every last Thursday of each month beginning June 25, 1987, until the sale action is cancelled.

ADDRESS: Comments should be submitted in writing to the District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902.

FOR FURTHER INFORMATION CONTACT: BLM, Green River Resource Area, P.O. Box 1170, Rock Springs, Wyoming 82902, (307) 362-6422. A sale brochure describing the bidding procedure is available upon request.

SUPPLEMENTARY INFORMATION: The lots are suitable for residential use and any development will require approval of both the City of Rock Springs and Sweetwater County. The mineral estate is owned by the State of Wyoming, and is subject to Oil and Gas Lease No. 77-602.

Specific patent reservations include a reservation for ditches and canals, utility lines and road rights-of-way. A description of these reservations are included in the sales brochure.

The grazing permittees have received two years prior notice of the sale. If a reduction in grazing use is required, a grazing decision will be issued after issuance of the land patent.

Any objections to the sale will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Donald H. Sweep,

District Manager.

March 13, 1987.

[FR Doc. 87-6037 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-22-M

[ID-040-4351-08]

Planning Activity; Amendment to the Lemhi Resource Management Plan et al

AGENCY: Bureau of Land Management, Salmon District Office.

ACTION: Notice of Planning Activity; Amendment to the Lemhi Resource Management Plan, the Challis Management Framework Plan, the Mackay Management Framework Plan, and the Ellis-Pahsimeroi Management Framework Plan.

SUMMARY: The Salmon District, Idaho, proposes to amend all Management Framework Plans (MFP) and the Resource Management Plan (RMP) within the Salmon District. The amendment would address:

(1) The designation of upper Trail Creek in the Lemhi Resource Area as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC).

(2) The designation of Sevenmile Creek Watershed in the Lemhi Resource Area as an ACEC.

(3) The designation of the Summit Creek Exclosure in the Challis Resource Area as an RNA/ACEC.

(4) The designation of Allison Creek Island in the Lemhi and Challis Resource Areas as an RNA/ACEC.

(5) The designation of Antelope Flat in the Challis Resource Area as an RNA/ACEC.

(6) The designation of a portion of Cronks Canyon in the Challis Resource Area as an RNA/ACEC.

(7) The designation of the East Fork Salmon River Bench in the Challis Resource Area as an RNA/ACEC.

(8) The designation of Germer Basin/Malm Gulch in the Challis Resource Area as an RNA/ACEC.

(9) The designation of Lake Creek in the Challis Resource Area as an RNA/ACEC.

(10) The designation of Pecks Canyon in the Challis Resource Area as an RNA/ACEC.

(11) The designation of Thousand Springs in the Challis Resource Area as an RNA/ACEC.

The geographical areas to be considered comprise approximately 13,000 acres of primarily BLM-administered lands in the Salmon District in Lemhi and Custer Counties, Idaho. The main issues identified in this amendment to date are: (1) Whether areas exhibit unique or special qualities to warrant special management consideration as an RNA/ACEC, and (2) what limitations or restrictions are appropriate.

An interdisciplinary team including range, wildlife, hydrology, soils, recreation, minerals, forestry, and archeology specialists will prepare the amendment and the environmental analysis.

Affected publics will be invited to participate in the process. For further information contact: Robert Hale, Challis Area Manager or Jerry Wilfong, Lemhi Area Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, (208) 756-5400.

Jerry W. Goodman,

District Manager.

March 13, 1987.

[FR Doc. 87-6030 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-66-M

[ID-943-07-4220-11; I-14647]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 320 acre withdrawal for the Cloverdale Pond continue for an additional 100 years, based upon the anticipated remaining life of the project. The land will remain closed to surface entry and mining, but has been and will remain open to the mineral leasing.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to:

Idaho State Director, Bureau of Land Management, 3380 Americans Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208-334-1735.

The Bureau of Reclamation proposes that the existing land withdrawal made by the Bureau of Land Management Order of January 28, 1952, for the Mountain Home Reclamation Project, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian Idaho

T. 1 N., R. 1 E.,
Sec. 22, E½.

The land described above contains 320 acres in Ada County.

The withdrawal is essential for protection of wildlife habitat and a reservoir. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No

change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 12, 1987.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 87-6038 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-GG-M

[NM-940-07-4220-11; NM NM 0384556]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that an 80.00-acre withdrawal for the Jicarilla Ranger Station and Administrative Site (formerly Gobernador Administrative Site) continue for an additional 20 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

DATE: Comments should be received by June 18, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, (505) 988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 3443 of August 21, 1964, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

Jicarilla Ranger Station and Administrative Site (Formerly Gobernador Administrative Site)

T. 29 N., R. 5 W.,

Sec. 29, S½SW¼.

The area described contains 80.00 acres in Rio Arriba County.

The withdrawal is essential for protection of substantial capital improvements on the Jicarilla Ranger District, Carson National Forest. The withdrawal closed the described lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 9, 1987.

Robert L. Schultz,

Acting State Director.

[FR Doc. 87-6039 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 10948]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 1,027.07-acre withdrawal for the Echo Amphitheater and El Rito Campgrounds continue for an additional 20 years. The land would remain closed to location and entry under the mining laws and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by June 18, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 4927 of October 20, 1970, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

Echo Amphitheater Campground

T. 25 N., R. 4 E.,
Sec. 32, E½E½, E½NW¼NE¼, SW¼NE¼, N½NW¼SE¼;
Sec. 33, W½W½.

El Rito Campground

T. 25 N., R. 6 E.,
Sec. 11, E½SE¼, NE¼NW¼SE¼;
Sec. 12, W½W½SW¼, SE¼SW¼SW¼;
Sec. 13, SW¼NE¼NW¼, NW¼NW¼, N½SW¼NW¼, SE¼SW¼NW¼, W½SE¼NW¼, SE¼SE¼NW¼, N½NE¼SW¼, SE¼NE¼SW¼, NE¼NW¼SW¼, NE¼SE¼SW¼, S½NE¼SE¼, W½NW¼SE¼, N½SW¼SW¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 14, E½NE¼NE¼;
Sec. 24, N½NE¼NE¼.

T. 25 N., R. 7 E.,
Sec. 18, W½ lot 4, SE¼ lot 4, SW¼SE¼SW¼;
Sec. 19, lot 1, E½ lot 2, W½NE¼NW¼, SE¼NE¼NW¼, SE¼NW¼.

The area described contains 1,027.07 acres in Rio Arriba County.

The withdrawal is essential for protection of substantial capital improvements on the Canjilon and El Rito Ranger Districts, Carson National Forest. The withdrawal closed the described land to mining but not mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.**

The existing withdrawal will continue until such final determination is made.

Dated: March 9, 1987.

Robert L. Schultz,

Acting State Director.

[FR Doc. 87-6040 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Reclamation

Notice of Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report for the South Delta Water Management Alternatives, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the South Delta Water Management Alternatives.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 ((NEPA), and section 21100 of the California Environmental Quality Act (CEQA), the Department of the Interior and the California State Department of Water Resources (DWR) intend to prepare a joint EIS/EIR for south delta water management.

The action is being initiated by an October 1986 agreement (South Delta Agreement) among the Bureau of Reclamation (Bureau), DWR, and the South Delta Water Agency (SDWA) that committed all three parties to work together to develop mutually acceptable, long-term solutions to the water supply problems of water users within the SDWA. The particular objectives of the SDWA are to improve and maintain water levels, circulation patterns, and water quality in the south delta area. The evaluation of alternatives to meet these objectives will also take into account broader objectives of the Bureau and DWR being pursued in connection with other programs for the delta region concerning: fisheries; overall efficiency of State Water Project and Central Valley Project operations; water supply reliability, through improved capabilities for banking winter supplies; navigation; and flood control protection, some of which may require a new Army Corps of Engineers permit.

Two workshops have been scheduled to solicit public input in determining the scope of the EIS/EIR and the significant issues related to the alternatives identified.

DATES: The workshops will be held on April 13, 1987, at 7:00 p.m. in Tracy, California, and April 21, 1987, at 7:00 p.m. in Sacramento, California.

ADDRESS: The workshops will be held at:

Sacramento Hilton, Tahoe Room, 2200 Harvard, Sacramento, California 95815

Tracy Inn, Gold Room, 13 West 11th Street, Tracy, California 95376

FOR FURTHER INFORMATION CONTACT:

Mr. Douglas Keinsmith, Bureau of Reclamation (MP-750), 2800 Cottage Way, Room W-2103, Sacramento, CA 95825, Phone: (916) 978-5121

Mr. Karl Winkler, California Department of Water Resources, 321 S Street, Room D-4, Sacramento, CA 95816, Phone: (916) 445-5955

SUPPLEMENTARY INFORMATION: The south delta area includes a portion of the Sacramento-San Joaquin Delta channels south of Stockton. Alternative actions being considered include dredging with channel and levee improvements and flow control structures; new intake gate locations for Clifton Court Forebay; enlargement of Clifton Court Forebay; and a CVP interconnection with Clifton Court Forebay. Other alternatives which may meet the South Delta Agreement objectives and also may provide benefits for water supply, water quality, agriculture and fish which will be considered include: the new intake gate locations for Clifton Court Forebay; enlargement of Clifton Court Forebay; a CVP interconnection with Clifton Court Forebay; increasing winter exports to fill storage south of the delta for water banking; an exhange with local interests for New Melones water releases to the south delta; and relocation of the Contra Costa Canal to Clifton Court Forebay.

Prior to implementation of the South Delta Agreement, it is likely that DWR and the Bureau will have to receive permits from several State and Federal regulatory agencies such as the California State Water Resources Control Board and the U.S. Army Corps of Engineers. It is anticipated that these agencies will participate in the development of and adopt this EIS/EIR to comply with the requirements of NEPA and CEQA.

Under the South Delta Agreement, the parties have committed to attempt to develop a final plan, focusing on physical and operational actions, by April 1, 1988. This commitment must be considered while selecting a manageable group of alternatives for in-depth evaluation. This EIS/EIR process is not intended to alter the responsibilities under the South Delta Agreement.

Dated: March 17, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87-6207 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permits; Marie P. Morin et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-716025

Applicant: Marie P. Morin, University of Hawaii, Honolulu, HI

The applicant requests a permit to take from the wild (Laysan Island, HI) 30 Laysan finches (*Telespyza cantans*) for holding in captivity for the purpose of scientific research. The applicant notes that there are an estimated 10,000 Laysan finches on Laysan Island.

PRT-716347

Applicant: Sea World of Florida, Orlando, CA

The applicant requests a permit to export one male and two female captive-bred Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *sandvicensis*) to Zoologischer Garten der Stadt Wuppertal in Wuppertal, West Germany for the purpose of enhancement of propagation.

PRT-716346

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import one captive born female Sumatran tiger (*Panthera tigris sumatrae*) from the Tarongo Zoo in Sydney, Australia to be added to their existing population. This Sumatran tiger will be included into the captive North American population to introduce new bloodlines.

PRT-715749

Applicant: Columbus Zoo, Powell, Ohio

The applicant requests a permit to purchase in foreign commerce one male cheetah (*Acinonyx jubatus*), from the Wassenaar Wildlife Breeding Centre in Holland, for export to the Beijing Zoo in Beijing, China. This cheetah will be used for captive breeding and exhibition.

PRT-716310

Applicant: Florida State Museum, Gainesville, FL

The applicant requests a permit to import from Bolivia specimens of the

following species: Andean cat (*Felis jacobita*), ocelot (*F. pardalis*), margay (*F. wiedii*), long-tailed otter (*Lutra longicaudis*), and Brazilian tapir (*Tapirus terrestris*). The specimens of cats were obtained through trapping and preservation during a survey of cat species of Bolivia. The survey was developed and implemented under the auspices of the Secretariat of the Convention on International Trade in Endangered Species (CITES). The specimens of tapir and otter were salvaged material obtained from local hunters and confiscated from illegal dealers by Bolivian wildlife officials. The specimens will be deposited into the Florida State Museum's research collections and made available to U.S. systematic biologists and other researchers.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: March 17, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-6046 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-55-M

Pipeline Application, New Jersey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by Pub. L. 93-153, Algonquin Gas Transmission Company has applied for a 30" natural gas pipeline right-of-way that will cross the northerly portion of the Great Swamp National Wildlife Refuge, Harding Township, Morris County, New Jersey.

The pipeline will convey natural gas across 1.9 miles of the The Great Swamp National Wildlife Refuge.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service will be proceeding with consideration of whether the application should be approved and if so, under what terms and conditions.

ADDRESS: Interested persons desiring to express their views should promptly send their name and address to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

Howard N. Larsen,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 87-6028 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Availability

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Placid Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4761, Block 277, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on March 10, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 12, 1987.

J. Rogers Pearcy,

Gulf of Mexico OCS Region.

[FR Doc. 87-6041 Filed 3-19-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Availability

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5560 and 5044, Blocks 258 and 259, respectively, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 10, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Mineral Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood

Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 12, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–6042 Filed 3–19–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Revision of Park Boundary; Women's Rights National Historical Park

Whereas, Pub. L. 95–42 (91 Stat. 211) dated June 10, 1977, amended the Land and Water Conservation Fund Act of 1965 to authorize the Secretary of the Interior to make minor boundary changes when necessary for the proper interpretation or management of an area of the National Park System; and

Whereas, Pub. L. 95–42, provides that the Secretary may acquire lands, or interests therein, adjacent to areas of the National Park System; and

Whereas the Village of Seneca Falls, New York has voted to donate to the National Park Service certain lands and structures adjacent to Women's Rights National Historical Park for use as a visitor center and other Park Service functions,

Therefore, pursuant to section (5) of Pub. L. 95–42, notice is given that the boundary of Women's Rights National Historical Park has been revised to include the 0.33 acre tract identified and described as Tract 101–08 on Land Status Map 101 on Drawing No. 488/80,003, Sheet 2 of 3, dated November 1986, prepared by the Land Resources Division, North Atlantic Region, National Park Service.

The map is on file and available for inspection in the office of the North Atlantic Region, Land Resources Division, Boston, Massachusetts and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, DC 20240.

Dated: December 8, 1986.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 87–6066 Filed 3–19–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty First Meeting of the Board for International Food and Agricultural Development (BIFAD) on April 10, 1987.

The purposes of the meeting are: (1) To receive reports, discuss and act upon recommendations for (a) a post-contract institutional linkage program and (b) extension of the Sorghum/Millet CRSP. (2) to hear a progress report on the centrally-funded seed technology program carried out by Mississippi State University; and (3) to hear BIFAD/AID Committee reports on procurement processes and implementation performance.

The Meeting will be held at 8:30 a.m. and adjourn at 12:00 on April 10, 1987. The Meeting will be held in Room 1107, State Department, 2201 C Street, Washington, DC 20523. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Marshall D. Brown, Counselor to the Administrator, C/AID, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to Mr. Charles D. Ward, Deputy Executive Director BIFAD Staff, in care of the Agency for International Development, Washington, DC 20523, or telephone him on (202) 647–8976.

Dated: March 11, 1987.

Marshall D. Brown,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 87–6012 Filed 3–19–87; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; United States v. Stone Hodge, Inc. d/b/a Stone Container Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on March 9, 1987, a proposed Consent Decree in *United States* v. *Stone Hodge, Inc. d/b/a/ Stone Container Corporation* ("Stone Container"), Civil Action No. 87–0529M was lodged with the United States District Court for the Western District of Louisiana (Monroe Division). The complaint in this enforcement action was filed on March 9, 1987, against "Stone Container" under sections 309(b) and (d) of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b) and (d), seeking civil penalties and injunctive relief to abate the discharge of pollutants into the Dugdemona River except as expressly authorized by the Clean Water Act and Stone Container's National Pollution Discharge Elimination System ("NPDES") permit. The Complaint alleges violations of the NPDES permit applicable to Stone Container's paper and paperboard mill in Hodge, Louisiana. The proposed Consent Decree ("Decree") requires Stone Container to undertake a comprehensive program, in accordance with a compliance schedule, to attain and thereafter maintain compliance with the NPDES permit's discharge limits. It further provides for interim discharge limits for a period of two years from the entry of the decree in order to allow for completion of the compliance program,

for stipulated penalties for failure to comply with the Decree, and for the payment of a $51,500 civil penalty for past violations of the Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Stone Hodge, Inc. d/b/a Stone Container Corporation*, D.J. No. 90–5–1–1–2623.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room 31B12, Federal Building, Shreveport, Louisiana and at the United States Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.30 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–6074 Filed 3–19–87; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application by Ganes Chemicals Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 19, 1987, Ganes Chemicals Inc., Lessee of Siegfried Chemical, Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 20, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: March 13, 1987.

[FR Doc. 87–6088 Filed 3–19–87; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application by Johnson Matthey Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 18, 1986, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Pethidine (meperidine) (9230)	II
Sufentanil (9470)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537. Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 20, 1987.

Dated: March 13, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87–6087 Filed 3–19–87; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances, Application by Mallinckrodt, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 14, 1987, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21

CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 20, 1987.

Dated: March 13, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-6086 Filed 3-19-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-8]

Monk's Pharmacy; Denial of Application for Registration

On December 20, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Monk's Pharmacy, 5208-B Baltimore Avenue, Philadelphia, Pennsylvania (Respondent). The Order to Show Cause sought to deny an undated application for registration as a retail pharmacy under 21 U.S.C. 823(f) executed by Solomon Ogunsola and received by the DEA on October 18, 1985.

The Order to Show Cause recited two statutory bases for the revocation of Respondent's registration under 21 U.S.C. 843(a)(4) and 823(f). The first basis pursuant to 21 U.S.C. 843(a)(4) was the August 7, 1985, conviction of Julius Monk, the former owner of Monk's Pharmacy, in the United States District Court for the Eastern District of Pennsylvania of two counts of omitting material information from records required to be kept, in violation of 21 U.S.C. 843(a)(4), a felony relating to controlled substances. The second basis recited in the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest as defined in 21 U.S.C. 823(f), as evidenced by Julius Monk's continued relationship with Monk's Pharmacy and the employment of Demetrius Monk, son of Julius Monk, and Solomon Ogunsola, R.Ph., at Monk's Pharmacy during the time Julius Monk diverted controlled substances from the pharmacy. Solomon Ogunsola, R.Ph., had executed the application for DEA registration.

The Order to Show Cause was received by Respondent on December 20, 1985. Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. After prehearing proceedings, a hearing was held in Washington, DC, on July 17, 1986. On October 23, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent's counsel filed exceptions to the Administrative Law Judge's opinion and recommendations on November 13, 1986. On November 19, 1986, the Administrative Law Judge transmitted the record of the proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Julius Monk, the former owner of Monk's Pharmacy, pled guilty on August 7, 1985, in the United States District Court for the Eastern District of Pennsylvania to two counts of omitting material information from pharmacy records required to be kept, in violation of 21 U.S.C. 843(a)(4), a felony relating to controlled substances. The execution of his sentence was suspended and Julius Monk was placed on probation for five years with certain conditions.

Although Julius Monk formally transferred ownership and control of Monk's Pharmacy to his son, Demetrius Monk, and to one Solomon Ogunsola, they make payments on the note only when they can afford to, without regard to the schedule of payments set out in the note. Julius Monk has taken no steps to exercise his rights under the note for their failure to make payments. Ogunsola is a registered pharmacist. Demetrius Monk is not. These two submitted the application in question.

An investigation of Monk's Pharmacy began when a pharmaceutical wholesale company informed DEA that this pharmacy had purchased 320 gallons of codeine-based cough syrup during a one year period. This quantity is greatly in excess of the norm. A DEA Diversion Investigator conducted an audit of certain controlled substances at Monk's Pharmacy and canvassed drug wholesalers in the Philadelphia, New York, and New Jersey areas. Using the pharmacy's own records, Monk's Pharmacy was found to be 43.91 gallons short of Bromanyl expectorant, a Schedule V codeine-based cough syrup. This represented 99.79% of the Bromanyl for which the pharmacy was accountable during and period audited. It also had an overage of 4,620 glutethimide 5 mg. tablets, a Schedule IV substance, representing 4,680% more than the total for which the pharmacy was accountable. Using shipping records obtained from suppliers of Monk's Pharmacy, it was discovered that Monk's was 1,060.91 gallons short of Bromanyl expectorant, representing 99.99% of the Bromanyl for which the pharmacy was accountable during that period. These records also revealed a shortage of 74,680 glutethimide 5 mg. tablets, representing 94.05% of the glutethimide for which the pharmacy was accountable. Codeine-based cough syrup and glutethmide are a combination of controlled substances which is widely abused in Philadelphia, where it is known as "pancakes and syrup". The combination is an abuser's substitute for heroin.

Julius Monk is not a pharmacist but owned Monk's Pharmacy during and prior to the period covered by the audit. Solomon Ogunsola, a registered pharmacist, worked at Monk's during this period. He also worked at two other pharmacies which showed significant shortages of controlled substances when audited by the Diversion Investigator. Demetrius Monk, son of Julius Monk, worked at the pharmacy during the period of diversion in 1982 and 1983 that led to the conviction of Julius Monk.

The Administrative Law Judge concluded that, although there was no direct evidence linking Solomon Ogunsola to the wrongdoing at Monk's Pharmacy and to the excessive shortages of controlled substances at the other two pharmacies where he was employed, he could infer that Ogunsola was not aware of the shortages and that, if Ogunsola was not aware of those conditions, he should have been. Although Julius Monk actually placed the Schedule III, IV, and V orders for Monk's Pharmacy with suppliers, Ogunsola indicated in a record book the quantities of those substances which should be ordered. Ogunsola simply had to be aware of the enormous quantities of substances being ordered, and of the extent to which those quantities exceeded the norm. One of the other two pharmacists employed at Monk's, becoming aware of the size of the pharmacy's business in drugs being widely abused, stopped filling prescriptions for them.

During Solomon Ogunsola's employment at the two pharmacies, huge quantities of popularly abused substances were obtained and were not accounted for. At both pharmacies, no dispensing pharmacist's initials were found on *any* of the pharmacy record copies of filled prescriptions, contrary to State law.

A pharmacist has an affirmative professional responsibility to see to it that drugs are kept in legitimate therapeutic channels:

The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescriptions. 21 CFR 1306.04(a).

Judge Young concluded that, to be unaware of what was happening in the three pharmacies in which he was working as Ogunsola claimed he was, would demonstrate a lack of the sense of responsibility required of a DEA registration holder.

Judge Young further concluded that it is difficult to believe that Demetrius Monk's activities with respect to Monk's pharmacy will be carried out with no influence from his father, the convicted Julius Monk. Demetrius Monk lives in a house owned by his father just two doors away, put no money down for the purchase of the pharmacy, and paid one dollar for the realty that includes Monk's Pharmacy, which he co-owns with his brother and sister. Demetrius Monk testified that he is a businessman who learned about business from his father. The sister, who still lives with her parents, is in pharmacy school and may work in Monk's Pharmacy after she graduates. The Administrative Law Judge concluded that the bonds linking the convicted Julius Monk with his children and the subject pharmacy are too close to permit a reasonable certainty that he will have no authoritative voice in its operation. His conviction, and the enormous shortages uncovered bearing his ownership, amply demonstrate that no pharmacy should be subject to his influence. The Administrative Law Judge recommeded that the Respondent pharmacy should not be entrusted with a DEA registration. The Administrator agrees with the recommendation of the Administrative Law Judge and adopts his findings of fact, conclusion of law and recommended decision in its entirety.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b) orders that the application for DEA Certificate of Registration, executed by Solomon Ogunsola and Demetrius Monk on behalf of Monk's Pharmacy in Philadelphia Pennyslvania, and any other outstanding applications for registration executed by Monk's Pharmacy, be and hereby are denied.

This order is effective April 20, 1987.

Dated: March 16, 1987.

John C Lawn,

Administrator.

[FR Doc. 87-6085 Filed 3-19-87; 8:45am]

BILLING CODE 4410-09-M

Pharmco Prescription Association, Inc.; Revocation of Registration

On June 4, 1986, the Administrator of the Drug Enforcement Administration (DEA) issued to Pharmco Prescription Association, Inc., 3412-B North Ocean Boulevard, Fort Lauderdale, Florida 33308, an Order to Show Cause proposing to revoke its DEA Certificate of Registration, AP8231920, and to deny any pending applications for renewal of such registration. The Order to Show Cause alleged that the continued registration of Pharmco Prescription Association, Inc. would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). Additionally, citing his preliminary finding that Pharmco Prescription Association, Inc.'s continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AP8231920 during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served on Janice Goodman, the owner of the pharmacy, on June 5, 1986. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Pharmco Prescription Association, Inc. is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on May 19, 1986, a representative of the Florida Department of Professional Regulation conducted an inspection of Pharmco Prescription Association, Inc. This inspection revealed that the pharmacy was being operated by unlicensed personnel. No licensed pharmacist was on the premises during the inspection and it was learned that no licensed pharmacist had been on the premises during the previous three weeks. Janice Goodman's husband Larry had directed unlicensed personnel to fill prescriptions presented in the pharmacy.

Based on information that Pharmco Prescription Association, Inc. had been ordering large quantities of morphine sulfate, a Schedule II controlled substance, an audit was conducted by DEA investigators on May 23, 1986. The audit period covered from November 23, 1985, through May 23, 1986, and revealed a shortage of over 14,000 dosage units of morphine sulfate. Furthermore, the audit revealed that during the period from January 1, 1985, through November 23, 1985, pharmacy personnel filled 45 prescriptions, which accounted for the dispensing of over 47,000 dosage units of morphine sulfate. Upon further investigation, it was discovered that at least 39 of these prescriptions, accounting for almost 45,000 dosage units of morphine sulfate, were forgeries.

The Administrator concludes that there is ample evidence to indicate that the continued registration of Pharmco Prescription Association, Inc. is inconsistent with the public interest. 21 U.S.C. 824(a)(4). An audit of the pharmacy revealed a significant shortage of morphine sulfate, a highly abused controlled substance. The pharmacy did produce some prescriptions which would account for a portion of the morphine sulfate it dispensed. However, further investigation disclosed that a substantial number of these prescriptions were forgeries. In addition, the pharmacy had been operating for at least three weeks without a registered pharmacist on the premises. No evidence of explanation or mitigating circumstances has been offered on behalf of the registrant. Therefore, the Administrator concludes that the registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP8231920, previously issued to Pharmco Prescription Association, Inc., be, and it hereby is revoked, and any pending applications for renewal of such registration are hereby denied. This order is effective immediately.

When the Order to show Cause/Immediate Suspension was served on Pharmco Prescription Association, Inc., all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until

April 20, 1987, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated March 16, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-6089 Filed 3-19-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-83]

Smith Discount Drugs; Denial of Application

On October 7, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Smith Discount Drugs (Respondent), of 1046 Broad Street, New Bern, North Carolina 28560, seeking to deny an application for registration executed on July 11, 1986, by Ozie T. Faison, Jr., R.Ph. The statutory basis for the Order to Show Cause under 21 U.S.C. 823(f) was the inconsistency of the registration of Respondent pharmacy with the public interest, as shown by, but not limited to, the conviction of Ozie T. Faison, Jr., on October 8, 1981, in the United States District Court for the Eastern District of North Carolina of conspiracy to distribute Schedule II controlled substances in violation of 21 U.S.C. 846, a felony relating to controlled substances.

Respondent, proceeding *pro se*, requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young, who, on November 18, 1986, entered an Order for prehearing statements. The agency complied with the Order, but to this date Respondent pharmacy has not submitted a prehearing statement. After requesting the views of the agency, Judge Young terminated the proceedings before him on January 30, 1987, so the matter may be presented to the Administrator for his issuance of a final order under 21 CFR 1301.54 (d) and (e). The Administrative Law Judge found, and the Administrator also finds, that Respondent has not witnesses to call and no documentary evidence to present and, therefore, the convening of an evidentiary hearing would be a useless exercise. Accordingly, under 21 CFR 1301.54 (d) and (e), the Administrator enters this final order on the record as it appears

The Administrator finds that on May 2, 1986, he entered a final order denying an application executed on March 26, 1985, by Ozie T. Faison, Jr., for registration of Smith Discount Drugs. See 51 FR 16403 (May 2, 1986). This denial followed a plenary hearing over which Judge Young presided. Judge Young issued his recommended ruling in the prior matter, Docket No. 85-37, on January 14, 1986, and the Administrator adopted that recommendation. The Administrative Law Judge and the Administrator both found that Faison was convicted of conspiring with a physician to distribute Schedule II controlled substances. During the spring and summer of 1981, a young woman sold Dilaudid three times to DEA Special Agents in New Bern, North Carolina. The woman had obtained the Dilaudid from the physician, who in turn had obtained it from Faison at the pharmacy. An audit of Dilaudid and Sopor at Respondent pharmacy revealed shortages of both of those drugs. A second audit uncovered a series of questionable Dilaudid prescriptions written by the physician. Several prescriptions bore non-existent addresses and a number of the "patients" did not exist or did not live at the indicated addresses.

The Administrator found in the earlier final order that Faison received $1,000 from the physician for each bottle of 100 Dilaudid he sold to the physician. The Administrator also found that the shortage of Sopor was caused, in part, by Faison dispensing the drug when patients brought in their prescription vials without prescriptions., Faison would write out prescriptions, awaiting the physician's signature. The Administrator concluded that Faison cannot be trusted with the handling of controlled substances and the public interest would not be served by the registration of this pharmacy.

The Administrator finds that the Administrative Law Judge acted properly in terminating the matter before him. Respondent apparently had no evidence to present to either the Administrative Law Judge or the Administrator that anything has changed since May, 1986, when, following a plenary hearing, the Administrator concluded that registration of the pharmacy would be inconsistent with the public interest. Since Respondent has submitted no evidence to the contrary, the Administrator finds that the registration of Smith Discount Drugs would still be inconsistent with the public interest.

Accordingly, the Administrator, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR Part 0.100, hereby denies the application for DEA registration executed by Ozie T. Faison, Jr., R.Ph., for Smith Discount Drugs dated July 11, 1986, and all other pending applications, effective immediately.

Dated: March 16, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-6090 Filed 3-19-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application by Sterling Drug Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 22, 1987, Sterling Drug Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Pethidine (meperidine) (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than April 20, 1987.

Dated: March 13, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-6091 Filed 3-19-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.

The title of the recordkeeping/ reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/ reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503. (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/ reporting requirements which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
State Employment Security Agency (SESA) Cash Management/Banking Survey
One-time only
State or local governments
53 respondents; 212 buden hours; no forms

This survey will provide information to improve cash management/banking practices in the SESAs to assure the integrity of the Unemployment Trust Funds; maximize interest earnings on the Fund; better control cash management functions; funds flow and cash needs forecasting for the payment of unemployment insurance benefits.

New

Employment and Training Administration
Unemployment Insurance Quality Control Denials Pilot Project

New

One-time Survey
Individuals or households; State or local governments; Businesses or Other for-profit
6,625 respondents; 6,890 hours; no forms

This pilot project is designed to help Department decide how best to incorporate inventigation of denied UI Claims with paid claims, and secondarily to indicate what State's error rates on denials, and the dollar consequences, are.

New

Occupational Safety and Health Administration
Survey of Users of Methylene Chloride to Determine Impacts of Health Standards
Other (nonrecurring)
Businesses or other for-profit; small businesses or organizations
2,028 responses, 411 hours; one form

This study is necessary in order to conduct regulatory and economic impacts analyses resultant from a revision to the current regulation on Methylene Chloride. The study will be used to assess potential costs and benefits or regulation as well as issues of possible substitutes for Methylene Chloride. All procedures and processors will be affected.

Extension

Overpayment Detection/Recovery Activities
1205–0173; ETA 227
Quarterly
State or local governments
52 respondents; 13,992 hours, 1 form

The Secretary has interpreted applicable sections of Federal laws, to require States to have reasonable provisions in their State UI laws that concern the prevention, detection and recovery of benefit overpayments caused by willful misrepresentation or errors by claimants or others. This report provides an accounting of the types and amounts of such overpayments and serves a useful management tool for monitoring overall UI program integrity.

Signed at Washington, DC, this 17th day of March, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87–6116 Filed 3–19–87; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part l, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C.

553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. OH87-30 dated January 2, 1987.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize General Wage Determination Nos. OH87-12, OH87-20, and OH87-23. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY87-9 (Jan. 2, 1987) ..... p. 768.

Volume II

Illinois:
IL87-2 (Jan. 2, 1987) ..... pp. 96-102, pp. 105-106, p. 111.
IL87-5 (Jan. 2, 1987) ..... pp. 126-129.
IL87-8 (Jan. 2, 1987) ..... pp. 142-146.
IL87-9 (Jan. 2, 1987) ..... pp. 148-149.
IL87-13 (Jan. 2, 1987) ..... pp. 176-178.
IL87-14 (Jan. 2, 1987) ..... pp. 186-188.
IL87-16 (Jan. 2, 1987) ..... pp. 206-214.
Indiana:
IN87-2 (Jan. 2, 1987) ..... p. 251.
IN87-3 (Jan. 2, 1987) ..... p. 269.
IN87-5 (Jan. 2, 1987) ..... p. 292.
IN87-6 (Jan. 2, 1987) ..... p. 302.
Michigan:
MI87-1 (Jan. 2, 1987) ..... pp. 423-424.
Minnesota:
MN87-5 (Jan. 2, 1987) ..... p.532.
MN87-7 (Jan. 2, 1987) ..... pp.542-560.
MN87-8 (Jan. 2, 1987) ..... pp.561-577.
Ohio:
OH87-12 (Jan. 2, 1987) ..... pp. 779-780.
OH87-20 (Jan. 2, 1987) ..... pp. 795-796.
OH87-23 (Jan. 2, 1987) ..... pp. 801-802.
Listing by location (index) ..... pp. xxvii-xxviii, pp.xliii-xliv, p.xlv.
Listing by decision (index) ..... p.lx.

Volume III

South Dakota:
SD87-3 (Jan. 2, 1987) ..... p. 304b.
Utah:
UT87-1 (Jan. 2, 1987) ..... p. 308.
UT87-3 (Jan. 2, 1987) ..... p. 321.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 13th day of March 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-5798 Filed 3-19-87; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Employee Stock Ownership Plans (ESOP) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Tuesday and Wednesday, April 7 and 8, 1987, in Room N-3437C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine-member work group was formed by the Advisory Council to study various ERISA issues relating to employee stock ownership plans (ESOP's).

The purpose of the April 7 and 8 meeting is to review and consider the use of ESOP's in conjunction with leveraged buyouts involving multiple investors. The work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before March 31, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200

Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above Address. Papers will be accepted and included in the record of the meeting if received on or before April 4, 1987.

Singed at Washington, DC, this 17th day of March, 1987.

Dennis M. Kass,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 87-6079 Filed 3-19-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on April 7, 1987, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

March 13, 1987.

[FR Doc. 87-6076 Filed 3-19-87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships Prescreening Section) to the National Council on the Arts will be held on April 6-8, 1987, from 9:00 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

March 13, 1987.

[FR Doc. 87-6077 Filed 3-19-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-424]

Vogtle Electric Generating Plant, Unit 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF-68 to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensees) which authorizes operation of the Vogtle Electric Generating Plant, Unit 1, at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan.

On January 16, 1987, the Commission issued Facility Operating License No. NPF-61 to the licensees which authorized operation of Vogtle Electric Generating Plant, Unit 1, to five percent of full power (170 megawatts thermal). License No. NPF-68 supersedes NPF-61.

The Vogtle Electric Generating Plant, Unit 1, is a pressurized water reactor located in Burke County, Georgia, approximately 25 miles south of Augusta, Georgia.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on December 28, 1983 (48 FR 57183). The power level authorized by this license and the conditions contained therein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of exemptions included in this license will have no significant impact on the environment (52 FR 1565).

For further details with respect to this action, see (1) Facility Operating License No. NPF-68; (2) Facility Operating License No. NPF-61; (3) the Commission's Safety Evaluation Report, dated June 1985 (NUREG-1137), and Supplements 1 through 6; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement, dated March 1985 (NUREG-1087); (7) the Partial Initial Decision of the Atomic Safety and Licensing Board, dated August 27, 1986; and (8) the Concluding Partial Initial Decision dated December 23, 1986.

These items are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Burke County Library, 4th Street, Waynesboro, Georgia 30830. A copy of the Facility Operating License NPF-68 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A. Copies of the

Safety Evaluation Report and its supplements (NUREG–1137) and the Final Environmental Statement (NUREG–1087) may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5258 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 16th day of March 1987.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Dirctor, PWR Project Directorate #4, Division of PWR Licensing-A.

[FR Doc. 87–6109 Filed 3–19–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on January 27, 1987 (52 FR 2813). Individual authorities established or revoked under Schedule A, B, or C between January 1, 1987, and January 31, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during January.

Schedule B

The following exception was established:

National Endowment for the Humanities

One position of Humanist Administrator (Assistant Director), Fellowships Program, Division of Fellowships and Seminars. Effective January 23, 1987.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Under Secretary for Small Community and Rural Development. Effective January 16, 1987.

One Midwest Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective January 22, 1987.

One Confidential Assistant to the Administrator, Farmers Home Administration. Effective January 29, 1987.

One Northwest Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective January 30, 1987.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective January 30, 1987.

Department of Commerce

One Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration. Effective January 8, 1987.

One Confidential Assistant to the Deputy Under Secretary for International Trade. Effective January 8, 1987.

One Confidential Assistant to the Director General, U.S. and Foreign Commercial Service, International Trade Administration. Effective January 16, 1987.

One Private Secretary to the Deputy General Counsel. Effective January 29, 1987.

Department of Defense

One Confidential Assistant to the Under Secretary of Defense for Acquisition. Effective January 21, 1987.

Department of Education

One Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs. Effective January 13, 1987.

One Special Assistant to the Assistant Secretary for Educational Research and Improvement. Effective January 13, 1987.

Department of Energy

One Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies. Effective January 16, 1987.

One Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies. Effective January 21, 1987.

Department of Health and Human Services

One Director, Policy, Planning and Liaison Staff to the Director, Office of Prepaid Health Care, Health Care Financing Administration. Effective January 7, 1987.

One Confidential Assistant to the Associate Administrator for External Affairs, Health Care Financing Administration. Effective January 13, 1987.

One Director, Office of Policy, Planning and Legislation to the Assistant Secretary for Human Development Services. Effective January 14, 1987.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective January 14, 1987.

Department of Housing and Urban Development

One Executive Assistant to the Regional Administrator—Regional Housing Commissioner. Effective January 9, 1987.

One Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary. Effective January 14, 1987.

One Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective January 15, 1987.

One Executive Assistant to the Regional Administrator—Regional Housing Commissioner. Effective January 16, 1987.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective January 20, 1987.

One Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective January 29, 1987.

Department of Justice

One Attorney-Advisor (Special Assistant) to the Principal Deputy Assistant Attorney General, Civil Division. Effective January 15, 1987.

One Special Assistant to the Assistant Attorney General, Civil Rights Division. Effective January 16, 1987.

One Confidential Assistant to the Director, Bureau of Justice Statistics. Effective January 29, 1987.

One Staff Assistant (Speechwriter) to the Director, Office of Public Affairs. Effective January 29, 1987.

One Research Associate to the Director, Office of Public Affairs. Effective January 29, 1987.

Department of Labor

One Special Assistant to the Director, Office of Information and Public Affairs.

Office of Public and Intergovernmental Affairs. Effective January 15, 1987.

One Secertary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective January 15, 1987.

Department of State

One Special Assistant to the Deputy Assistant Secretary for Policy and Counterterrorism, Bureau of Diplomatic Security. Effective January 7, 1987.

One Protocol Officer (Visits) to the Chief of Protocol. Effective January 30, 1987.

One Foreign Affairs Officer to the Chief of Protocol. Effective January 30, 1987.

Department of the Treasury

One Staff Assistant to the Deputy Assistant Secretary for Finance and Management. Effective January 2, 1987.

One Staff Assistant to the Assistant Secretary (Management). Effective January 13, 1987.

ACTION

One Special Assistant to the Director. Effective January 27, 1987.

One Executive Assistant to the Director. Effective January 27, 1987.

One Confidential Assistant to the Associate Director for Domestic and Anti-Poverty Operations. Effective January 29, 1987.

Agency for International Development

One Program Operations Assistant to the Director, Office of Policy Development and Program Review, Bureau for Program and Policy Coordination. Effective January 21, 1987.

Commission on Civil Rights

One Public Affairs Officer to the Staff Director. Effective January 22, 1987.

Consumer Product Safety Commisson

One Secretary (Stenography) to the Chairman. Effective January 30, 1987.

Council on Environmental Quality

One Confidential Assistant to the Chairman. Effective January 30, 1987.

Federal Maritime Commission

One Secretary (Stenography) to the Vice Chairman. Effective January 29, 1987.

General Services Administration

One Confidential Assistant to the Regional Administrator. Effective January 9, 1987.

One Special Assistant to the Associate Administrator for Operations. Effective January 22, 1987.

International Trade Commission

One Staff Assistant (Economics) to a Commissioner. Effective January 21, 1987.

One Staff Assistant to a Commissioner. Effective January 30, 1987.

Interstate Commerce Commission

One Staff Advisor (Management) to a Commissioner. Effective January 29, 1987.

Office of Management and Budget

One Staff Assistant to the Administrator for Information and Regulatory Affairs. Effective January 9, 1987.

Small Business Administration

One Director of Private Sector Initiatives to the Associate Deputy Administrator for Special Programs. Effective January 5, 1987.

One Staff Assistant to the Administrator. Effective January 8, 1987.

One Special Assistant to the Administrator. Effective January 20, 1987.

One Executive Assistant to the Deputy Administrator. Effective January 28, 1987.

Tax Court of the U.S.

Two Secretaries (Confidential Assistants) to a Judge. Effective January 7, 1987.

Authority: 5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., P.218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–5990 Filed 3–19–87; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Final notice of new system of records.

SUMMARY: This document provides final notice of a new system of records. USPS 220.010, "Marketing Data Base—Customer Records" will contain market information about Postal Service business customers for use by account representatives and postal management responsible for servicing the accounts of those customers.

EFFECTIVE DATE: March 20, 1987.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff (202) 268–5158.

SUPPLEMENTARY INFORMATION: On December 4, 1986, at 51 FR 43791, the Postal Service published advance notice of its establishment of a new Privacy Act system of records, USPS 220.010, Marketing Data Base—Customer Records. That notice stressed that the marketing data base is intended to contain information of a business nature about postal customers who are volume users of postal services and employees who manage the acconts of those customers. The information will come from commercial data bases, forms such as statements of mailing completed by customers, and postal employees' knowledge gleaned from servicing the accounts. Consequently, most of the information in the system will not come within the purview of the Privacy Act since it is about entities not covered by the Act, i.e., corporations, other business firms, and organizations and their principals. The data base is being established as a Privacy Act system of records merely as a precautionary measure in the event that any information within it might be construed as personal in nature.

We received three comments, all of which raise concerns about our policies for the disclosure, security, and accuracy of information in the system that may be commercially sensitive. The system description and attendant procedures are intended, however, to affect only that part of the data base which contains information about individuals and is protected by the Privacy Act. We consider it inappropriate to address concerns about commercial information in a Privacy Act system description. For this reason, we are considering the issuance of an independent document to address these concerns.

Therefore, this constitutes final notice of the Postal Service's adoption of system USPS 220.010, Marketing Data Base—Customer Records, without change, as follows:

USPS 220.010

SYSTEM NAME:

Marketing Data Base—Customer Records.

SYSTEM LOCATION:

Marketing Department, USPS Headquarters; Marketing and Communications, Regions; Marketing/Customer Service, Divisions and MSCs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers or employees of corporations, other business firms, and organizations

that are volume users of postal services; USPS account representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Organization names, addresses, and telephone numbers; size of firm; Standard Industrial Classification Code; officers of the organization or other contact persons; purchase records for USPS services; information on service or equipment needs; USPS account representatives and other postal employees serving the organization and calls made on the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—To provide market information about business customers for USPS employees to use to sell postal products and services, assure account management, conduct research, plan new products and services, and otherwise make financial and operational decisions about the condition of the USPS. Specifically, this includes:

1. Assisting account representatives and other marketing and postal personnel in contacting and servicing customers and selling postal services.

2. Developing and conducting market research.

3. Targeting promotion campaigns, newsletters.

4. Testing new products and services.

Use—

1. Disclosure may be made from the record of a company, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape or disks.

RETRIEVABILITY:

Records are indexed by organization name, organization identification number, services purchased, ZIP Code area, sales territory, USPS account representative, and Division/MSC.

SAFEGUARDS:

Computer records are subject to computer security procedures, including password access.

RETENTION AND DISPOSAL:

Records are maintained for three years after final entry and then deleted from the data base.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Marketing Department, Headquarters.

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the Division Field Director of Marketing and Communications for their geographic area.

RECORD ACCESS PROCEDURE:

See Notification above.

CONTESTING RECORD PROCEDURE:

See Notification above.

RECORD SOURCE CATEGORIES:

Information is obtained from USPS business customers, statements of mailing and other USPS forms completed by the customer, commercial data bases, and account representatives' personal knowledge.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-6044 Filed 3-19-87; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 24212; File No. SR-Amex-86-30]

Self-Regulatory Organizations; Order Granting Accelerated Approval To Proposed Rule Change by American Stock Exchange, Inc., Relating to Classification of Exchange Floor Governors and Structure of the Nominating Committee

I. Introduction

The American Stock Exchange, Inc. ("Amex" or "Exchange") submitted, on December 18, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, to amend the Exchange Constitution relating to the classification of floor governors on the Exchange's Board of Governors ("Board") and the structure of the Nominating Committee for the Board of Governors.[1]

The proposed amendments to the Amex Constitution would: eliminate provisions that can have the effect of requiring more than two specialists to serve on the Exchange's Board of Governors; direct the Board's Nominating Committee to consider candidates from all principal categories of floor activity when filling vacancies on the Board designated for floor representatives; and, require that of the four industry members of the Nominating Committee, two must be members who spend a substantial part of their time on the Exchange floor, and two must be "upstairs" executives of member organizations.

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by issuance of a Commission release (Securities Exchange Act Release No. 24065, February 5, 1987) and by publication in the **Federal Register** (52 FR 4547, February 12, 1987). No comments were received regarding this proposal.

II. Description of Current Provisions and Proposed Changes

Under the Amex Constitution, twelve members of the Exchange's twenty-five member Board must be members of the Exchange.[2] Five of these members are

[1] Amendment No. 1 to File No. Sr-Amex-86-30 was filed by the Amex on January 19, 1987. The Amendment stated that the proposed amendments to the Exchange Constitution had been approved by the Exchange membership at a special meeting of regular members held on January 9, 1987.

[2] Amex Constitution, Article II, section 1(a)(1). These governors (hereinafter "industry governors") must be either regular, options principal, associate or allied members of the Exchange.

Continued

required to spend a substantial part of their time on the Exchange floor [3] ("Floor governors") and two of these floor governors must be specialists.[4]

The Amex's Board is further divided into three classes, for election purposes, each comprised of eight governors.[5] Each year one class (one third) of the Amex's Board is elected to serve a three year term.[6] The Exchange's Constitution currently provides that two of the three specified classes must include the election of at least one specialist.[7] Amex indicates that this results in requiring the election of at least one specialist in two out of every three years even if two specialists are already serving on the Board.

The Amex proposes to remove the requirement, contained in Article II, section 1(c)(2) and (3) that at least one specialist be elected in two of the specified classes. This will not alter the requirement that at least two specialists serve on the Board of Governors. According to Amex, however, the proposal will eliminate situations where a specialist is required to be elected even though the total number of specialists required to be on the Board are already serving.

In addition, Amex proposes to add language to Article III section 7(c) of the Exchange Constitution which would direct the Exchange's Nominating Committee,[8] seeking nominees for floor governor positions, to select candidates so that, "to the greatest extent practicable, persons engaged in all principal categories of floor activity have an opportunity to serve on the Board."

The Amex also proposes to amend Constitutional provisions relating to the composition of the Exchange's Nominating Committee. The Nominating Committee consist of four public representatives and four representatives of the industry.[9] Currently, there is no provision specifying representation among the industry representatives for various industry constituent groups such as members who work in executive or partnership capacities with or for member firms and who do not spend a substantial amount of time on the Exchange floor ("upstairs members") or members who work principally on the Exchange floor ("floor members").

The Amex proposes to amend Article III, section 5(a)(1) and (2) of the Constitution to require that of the four industry representatives on the Nominating Committee, two will be Exchange members who spend a substantial part of their time on the Exchange floor and two must be upstairs members. The Exchange also proposes to add a provision[10] that prohibits the two floor members of the Nominating Committee from being engaged in the same principal category of floor activity (*e.g.* specialist, options trader, floor brokers). According to Amex, the proposed requirement for equal representation between upstairs and floor members will merely serve to codify the Exchange's current custom of having upstairs and floor members equally represented on the Nominating Committee.

In its filing, the Amex states that it has based its proposed amendments to the Exchange Constitution on recommendations received from a committee formed by the Board of Governors to review constitutional requirements regarding qualifications of floor governors and the composition of the Nominating Committee.[11] Amex indicates that the Committee was formed in response to a membership petition submitted to the Board of Governors which proposed to eliminate the requirement that two of the five floor governors must be specialists and which also proposed to increase the size of the Nominating Committee from eight to ten members (five industry and five public representatives) and specify that the industry representatives would consist of one specialist, one market maker and one floor broker. Amex states that this petition was promoted by a concern that floor members, other than specialists, were underrepresented on the Board and in the nominating process.

The Amex Board of Governors, at its October meeting, declined to approve the changes proposed in the member's petition. In response to the concerns of the members, however, the Board authorized the formation of the Committee. This proposed rule change is a result of the Committee's recommendations regarding the Board and the Nominating Committee's composition.

III. Discussion

The Commission has reviewed the Amex proposal in light of the standards set forth under section 6(b) of the Act and, particularly section 6(b)(3) of the Act. Section 6(b)(3) requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs.[12]

After careful review, the Commission has concluded that the proposed Amex amendments meet the fair representation requirements of section 6(b)(3). The proposed elimination of the requirement in Article II, section 1(a)(2) and (3) that at least one specialist be elected in two of the specified classes of the Exchange's Board does not alter the requirement that at least two specialists serve as floor governors, nor does it impact the overall proportion of representation on the Board between upstairs members and floor members.

The proposed change serves only to eliminate the seemingly inadvertent result where these provisions can require additional specialists to be elected to the Board even when the mandated minimum number of specialists are already serving on the Board of Governors. In the Commission's view, this change serves to open the remaining floor governor positions on the Board to any floor member constituencies and thereby facilitates the Board's representation of all aspects of the floor membership. The Commission therefore concludes that this proposed change complies with the standards of section 6(b)(3) of the Act.

According to the Amex the proposed changes to Article III, section 5(a) (1) and (2) designating that two of the four industry representatives on the Nominating Committee must be floor members and two upstairs members, and that the floor members may not both be engaged in the same category of

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The remaining memberhsip of the Amex Board consists of twelve representatives of the public (none of whom are, or can be affiliated with, a broker or dealer in securities), (Section 1(a)(2)), and the Chief Executive Officer of the Exchange (Section 1(a)(3)).

[3] *Id.*, section 1(a)(1)(IV).

[4] *Id.*, section 1(a)(1)(V).

[5] *Id.*, section 1(c).

[6] *Id.*, section 1(d).

[7] *Id.*, section 1(c)(2), (3).

[8] This committee nominates candidates for the Amex's Board.

[9] Article III, section 5(a)(1) and (2). An industry representative must be a regular, options principal, associate or allied member of the Exchange who is a principal executive officer or a principal partner of a regular, options principal or associate member corporation or firm, or be a regular or options principal member of the Exchange who is not associated with any member organization. None of the industry representatives may be members of the Board of Governors.

[10] Amex Constitution, Article III, section 5(a)(3).

[11] This Committee was composed of six members of the Board of Governors and was chaired by Robert Carswell, a senior partner of Sherman & Sterling (hereafter "Committee").

[12] 15 U.S.C. 78f(b)(3). On at least four recent occasions, the Commission has evaluated exchange proposals in light of the requirements of section 6(b)(3). *See, e.g.*, Securities Exchange Act Release Nos. 24090 (February 12, 1987), (File No. SR-CSE-86-6); 22959 (February 28, 1986), 51 FR 8060 (File No. SR-NYSE-85-47); 22728 (December 19, 1985), 50 FR 53051 (File No. SR-Phlx-85-23); 21439 (October 31, 1984), 49 FR 44577 (File Nos. SR-CBOE-84-14, SR-CBOE-84-15).

floor activity, serves to codify the Exchange's custom of equal representation between upstairs members and floor members and ensure that the principal categories of floor members have an opportunity for representation on the Nominating Committee. In the Commission's view, the proposed changes achieve these goals by providing for appropriate proportional representation between upstairs and floor members on the Nominating Committee thereby ensuring that the various constituencies among floor members will be broadly represented on this important committee. Accordingly, the Commission concludes that this proposed change is consistent with the standard of section 6(b)(3) of the Act.

The language Amex proposes to add to Article III, section 7(e) directs the Nominating Committee to select nominees for floor governor positions so that persons engaged in all principal categories of floor activity have an opportunity to serve on the Board. The Commission believes this language, viewed in the context of the required representation of at least two specialists among the floor governors, will serve to ensure the broadest possible representation among the various categories of floor members, and, thus, is consistent with the requirements of section 6(b)(3) of the Act.

IV. Conclusion

Based on the above, the Commission believes that the proposed amendment to the Amex Constitution concerning specialist representation on the Board does not alter the Exchange's current structure that provides for fair representation of its members on the Exchange's Board of Governors. Moreover, the Commission believes that the other changes will continue to ensure that the Board is comprised of a fair representation of its members as required under the Act.

The Amex has requested accelerated approval of this proposal in preparation of its upcoming April 13, 1987 election.[13] The Commission finds good cause for accelerating approval of the proposal in that the Exchange needs adequate time to prepare proxies and voting forms under the amended Constitutional provisions, and to solicit and validate sufficient ballots prior to the Exchange's election to ensure the required quorum for an election.

[13] *See* letter from Carrie E. Dwyer, Senior Vice President and General Counsel, Amex, to Howard L. Kramer, Assistant Director, Division of Market Regulation, dated March 2, 1987.

For the reasons discussed above, the Commission also finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(3) of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be, and thereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 13, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-6120 Filed 3-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24216; File No. SR-DTC-86-10]

Self-Regulatory Organizations; Depository Trust Company; Order Approving Rule Change Regarding Computer-to-Computer Facility II

On December 23, 1986, the Depository Trust Company ("DTC"), filed a proposed rule change (File No. SR-DTC-86-10) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would expand the methods of access to DTC's Computer-to-Computer Facility II ("CCF-II"). The Commission published notice of the proposal in the **Federal Register** on February 3, 1987.[1] No comments were received. For the reasons discussed below, the Commission has determined to approve the proposed rule change.

I. Description of the Proposal

The proposal would expand the methods of access to DTC's Computer-to-Computer Facility II ("CCF-II"). CCF-II allows DTC Participants to transmit to and receive from DTC transactional data through a link between DTC's mainframe computer and Participants' mainframe computers. Currently, Participants can use CCF-II only if they have access to a mainframe computer manufactured by International Business Machines ("IBM"). The proposed rule change would allow Participants with non-IBM computers to use CCF-II. In addition, the proposal would allow Participants with an IBM MVS/Bulk Data Transmission ("BDT") computer to make high speed transmission of data to and from DTC through the CCF-II system.

[1] Securities Exchange Act Release No. 24026 (January 27, 1987), 52 FR 3373.

II. DTC's Rationale

DTC states that the proposal is consistent with the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. DTC states that the proposal will enable Participants to make more effective and efficient use of their computer resources.

III. Discussion

The Commission believes that the proposal promotes the prompt and accurate clearance and settlement of securities and is consistent with DTC's duty to safeguard securities and funds under section 17A of the Act. As discussed below, the Commission is approving DTC's proposal.

The proposed expansion of CCF-II services is another step that will help increase industry automation and processing efficiency while decreasing Participant processing costs. Currently, Participants without an IBM mainframe computer must transmit data to and receive data from DTC either through the Participant Terminal System or by delivery of magnetic tapes.[2] These data transmission methods generally are more costly to a large transmission volume Participant than transmission through CCF-II. For example, tapes must be loaded, edited, prepared for shipment and hand-carried to DTC's offices. Delivery of data by tape presents a greater risk of loss than electronic transmissions. Expansion of CCF-II capabilities to encompass computers beyond only IBM computers will permit more Participants to link their mainframe computers with DTC's mainframe computer. Expansion of CCF-II also will reduce delays in DTC's processing of Participant instructions and Participants' reconciliation of DTC reports of completed or rejected instructions.

The Commission believes that DTC's proposal is consistent with the safeguarding of funds and securities in its custody and control or for which it is responsible. Entry into CCF-II is restricted through use of a password to prevent unauthorized transmissions. DTC performs a periodic internal accounting review of all of its operations, including CCF-II, and is subject to an annual independent

[2] *See*, in a related matter, DTC's recent rule filing requiring Participants to use automated input for Participant originated transactions and rejecting hardcopy input except under certain limited circumstances. Securities Exchange Act Release No. 24166 (March 3, 1987) 52 FR 7360 (March 10, 1987).

accountant review of its internal accounting controls. DTC also is subject to examinations by the Federal Reserve Bank of New York that specifically address electronic data processing functions. DTC has operated CCF-II on a pilot basis for several years without losses or operational difficulties.

IV. Conclusion

On the basis of the foregoing, the Commission finds the proposed rule change (File No. SR-DTC-86-10) consistent with the Act, and, more specifically, with section 17A of the Act.

Accordingly, It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-DTC-86-10) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 13, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-6121 Filed 3-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24220; File No. SR-DTC-87-02]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

The Depository Trust Company ("DTC"), on February 25, 1987, filed a proposed rule change (File No. SR-DTC-87-02) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission is publishing this notice to solicit public comment on the proposal.

The proposal establishes DTC's Automated Settlement Draft processing system authorizing a pilot operation using new automated settlement drafts, as distinct from the current manual drafts. Assuming the pilot proves successful, DTC plans to schedule full implementation of the new system, in which case its use would become mandatory for all DTC participants.

DTC states that the principal effects of the proposal on its participants will be that participants will no longer have to: (1) Maintain a supply of blank drafts, or (2) prepare and submit drafts to DTC to receive their settlement balances. Instead, DTC will electronically generate draft forms for the balances that are due participants and make those drafts available to participants. DTC states that if the Automated Settlement Draft process is fully implemented, DTC would no longer accept participant prepared drafts.

DTC's states that the proposal is consistent with the Act, particularly section 17A of the Act, because it will promote prompt and accurate clearing and settlement of securities transactions. DTC further represents that implementation of the proposal will provide its settlement process with improved accounting, control, and efficiency.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register**. Six copies of the comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, with accompanying exhibits, and all written comments except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-87-02 and should be submitted by April 10, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: March 16, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-6122 Filed 3-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24214; File No. SR-NASD-87-11]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Acceptance and Settlement of COD/POD Transactions

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to section 64 of the NASD's Uniform Practice Code eliminates the exemption in subparagraph (a)(5)(ii) of the rule, under which a cash on delivery ("COD") or payment on delivery ("POD") transaction may be settled physically if both parties to either side of the transaction (i.e., the customer and its agent or the member and its agent) are not participants in a registered securities depository. The amendment would have the effect of requiring that all COD/POD transactions executed by a broker-dealer for a customer be processed through the confirmation and book-entry facilities of clearing agencies. If this method is not used, transactions would be completed on a regular-way settlement basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendment to section 64 of the NASD's Uniform Practice Code is to eliminate the exemption in subparagraph (a)(5)(ii) of that section, which provides that a COD/POD transaction may be settled physically if both parties to either side of the transaction are not participants in a registered securities depository.

On January 1, 1983, new section 64 of the Uniform Practice Code, Acceptance and Settlement of COD Orders, was adopted by the NASD as part of an industy-wide effort to modernize trade processing, encourage the book-entry settlement of transactions through the use of the Institutional Delivery ("ID") Systems available through registered securities depositories and to help decrease the Don't Know ("DK")

problems attendant with physical deliveries. The rule applied only to transactions that involved NASD members and customers who were *both* participants or whose agents were participants in a depository. The rule did not affect the clearance of COD/POD business of NASD members that were not particpants or whose agents were not participants in a depository. Nor did the rule require members, their COD/POD customers, clearing agents or correspondents to become participants in a registered securities depository. The rule also did not apply to transactions that were settled outside the United States (as proposed, this exemption will remain).

Since the adoption of Section 64 in 1983, the industry has realized the benefits of book-entry settlement of COD/POD transactions in that it reduces DK rates, lowers processing costs and provides timely settlement of transactions. Further, the majority of COD/POD transactions are processed through the ID System.

However, the transactions that are settled outside the ID System by relying on the section 64 exemptions are contributing to delays in processing, and increasing broker-dealer operational expenses and depository costs. This is a result of the need to maintain larger quantities of certificates to satisfy physical deliveries, which would not be required if these transactions were processed through the ID System or another type of book-entry delivery. The NASD believes that any need for the exception in subparagraph (a)(5)(ii) of Section 64 is outweighed by these factors.

This amendment would have the effect of requiring that all COD/POD transactions executed by a broker-dealer for a customer be processed through the confirmation and book-entry facilities of clearing agencies. If this method is not used, transactions would be completed on a regular-way settlement basis. Because it is not necessary for a broker-dealer to become a member of a securities depository, but only to have access to a bank that is a member of a depository in order to extend the COD/POD privilege to customers, the effect of removing this exemption is minimal while the benefits of book-entry settlement would be realized.

The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, which require that the rules of registered securities exchanges foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities in that it would require all COD/POD transactions executed by a broker-dealer for a customer either be processed through the confirmation and book-entry facilities of clearing agencies or completed on a regular-way settlement basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not foresee any impact on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participant or Others

The proposed amendment was published for comment in NASD Notice to Members 86-60 (August 27, 1986). Pursuant to its request, the NASD received fourteen comment letters regarding the proposed rule change. Eleven (79 percent) of the commentators generally approved of the amendment. Three (21 percent) of the commentators opposed the amendment.

One of the commentators opposed the amendment on the basis that it unduly favored large direct link banks. In addition, this commentator argued that book-entry clearance by a correspondent for his firm's clients is often very expensive and time consuming, and frequently not offered by the client's correspondent. This commentator also objected to the amendment on the basis that those customers who must wire funds in order to meet the regular-way settlement required by the amendment, would only wire such funds to the largest broker-dealer firms. Thus, the commentator argued, the amendment is unfair to small broker-dealers.

Another commentator opposed to the amendment argued that requiring his firm to join a depository would increase the firm's operating costs by 20 percent to 25 percent. In addition, this commentator cited the difficulty his firm has encountered in trying to locate a bank that is a member of a depository.

The third commentator that opposed the amendment cited the difficulty his firm has encountered in persuading its smaller institutional clients that are not direct clearing members and whose banks are not direct clearing members to move to book-entry clearance. This commentator argued that at present, small, regional member firms are at a competitive disadvantage to the branch offices of large wirehouses and banks and that the amendment would aggravate this situation.

After consideration of the above-referenced comments, the Board of Governors concluded that the impact of the amendment upon smaller broker-dealers currently operating outside a depository environment would be minimal. The Board of Governors noted that under the proposed amendment it was not necessary for a broker-dealer to become a member of a securities depository, but only that it have access to a bank that is a member of a depository in order to extend the COD/POD privelege to its customers.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, that Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-NASD-87-11 and should be submitted by April 10, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 13, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-6123 Filed 3-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24213; File No. SR-NYSE-87-04]

Self-Regulatory Organizations: Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 3, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to eliminate the exemptions relating to COD transactions which are set forth in Rule 387.10 (2) and (3).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 387(a)(5) requires a customer or its agent transacting COD[1] transactions to utilize the facilities of a securities depository for the confirmation, acknowledgment and book entry settlement of all depository eligible transactions. Rule 387.10 (2) and (3) exempt transactions wherein both a member organization or customer and their agent are not participants in a securities depository from the requirements of paragraph (5). The purpose of this rule change is to eliminate the exemptions relating to COD transactions which are set forth in Rule 387.10 (2) and (3). The elimination of these exemptions would require member organizations and their customers to have a participating agent or be a direct participant in a depository to settle their COD transactions in eligible securities.

Rule 387.10 currently states that the exemption contained in Rule 387.10 (2) and (3) shall be periodically reviewed by the Exchange in order to determine their continued necessity. It is now believed that eliminating these exemptions will benefit the industry as a whole.

Member organization representatives along with the Depository Trust Company (DTC) and the DTC ID (Institutional Delivery) Implementation Committee (which includes representatives from the American Bankers Association, Life Office Management Association, Investment Company Institute, Investment Counsel of America and the Securities Industry Association) have petitioned the Exchange and the National Association of Securities Dealers, Inc. (NASD) to remove the above mentioned exemptions from their respective rules. The effect would be to require virtually all COD transactions in eligible securities to be confirmed, affirmed and book entry settled through a registered securities depository.

DTC reports that while the vast majority (in terms of dollar amount) of COD transactions currently settle through ID systems (e.g., 98% of bank managed assets and 99.5% of dollars handled by investment managers), there are still a number of entities that physically make settlements in depository eligible securities. Moreover, DTC compiled statistics indicate that 1,600 out of 3,000 banks and 148 out of 1,261 investment managers cannot be readily identified as users of the ID systems, although DTC believes that a substantial number of the remaining organizations already participate in ID systems on an omnibus basis through direct or indirect depository members. Such deliveries represent significant exception processing costs to the securities industry in terms of manpower and facilities which are eventually passed along to customers. Currently, DTC estimates there are 1,500 daily physical securities settlements on a COD basis outside the system costing approximately $25 to $50 per delivery. DTC has stated that if these settlements were made through a depository, either directly or indirectly, savings of between $9,000,000 to $18,000,000 annually could be realized.

DTC has indicated that small broker-dealers and institutions will not be disadvantaged by having to process their COD transactions indirectly through a depository with an agent bank or broker from a cost or convenience standpoint. DTC states that institutions could obtain agent bank services for as little as $2,500 per year. An SEC report, dated June, 1985, relating to immobilization of securities which was based on information supplied by the securities industry estimates an institution's cost for physical settlements could be $25 to $50 per trade. Therefore, it could be cost efficient for institutions having as few as two trades per week to settle using an agent bank. DTC also indicates that the ID systems will be able to absorb the additional volume without any anticipated problems.

The Exchange believes all its member organizations doing a public business are already in a depository environment for settling COD transactions, directly or indirectly. However, any member or non-member brokers and their customers choosing not to enter a depository environment retain the option to settle transactions on a cash basis.

There are three states that do not allow assets of insurance companies and three states that do not allow assets of state retirement systems to be held by a depository. Some states also require the securities to be maintained within the respective state. Since the implementation of Rule 387, custodian banks for institutions in states with such restrictions have processed transactions through the ID book entry system and have withdrawn the securities for safekeeping. In considering the 1982 amendment to Rule 387 which establishes the requirements of Rule 387(a)(5) and the exemptions contained in .10 of the Rule, the SEC addressed the matter of state laws and found it not to be an impediment to the implementation of the rule.[2]

The NASD has indicated that it will adopt a similar rule change and the other national securities exchanges will be urged to adopt similar revisions to their COD regulations.

The rule change will not become effective until ninety days after the Commission issues a Release approving such rule change for both the NASD and the Exchange.

[1] COD—While Rule 387 is entitled COD Orders (Collect on Delivery) it also refers and applies to POD Orders (Payment on Delivery).

[2] See SEA Release No. 19227 (November 9, 1982).

The proposed amendment to Rule 387 is consistent with the requirements of sections 6(b)(5) and 17A(a)(1) of the Securities Exchange Act of 1934 (the "Act").

The proposal is consistent with section 6(b)(5) in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. This is so because the procedures inherent in the electronic confirmation, acknowledgement and book entry settlement are made applicable by the proposal to an increased number of COD customers, and are more efficient and expeditious than current systems that do not utilize procedures for the electronic transfer of information.

The proposed amendment is consistent with section 17A(a)(1) of the Act wherein the Congress found that:

"(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

"(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

"(C) New data processing and communications techiques create the opportunity for more efficent, effective, and safe procedures for clearance and settlement.

"(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors."

The proposed amendment is consistent with section 17A(a)(1)(A) in that it will encourage the prompt and accurate clearance and settlement of COD transactions by requiring that these functions take place electronically within a depository environment. The transfer of record ownership and safeguarding of securities and funds will also be enhanced by the use of a depository.

The proposed amendment is consistent with section 17A(a)(1)(B) in that it will encourage the use of more efficient depository procedures for confirmation, acknowledgement and settlement of COD transactions by a greater number of COD customers. A diminished reliance on less efficient methods would reduce the clerical, interest and other related costs currently borne by broker-dealers and eventually passed along to their customers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposal does not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act. It should be noted that there are many bank and broker-dealer clearing agents that are able to provide a full range of clearing and recordkeeping services for those who do not wish or are unable to develop systems necessary to interface with a depository.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to file number SR–NYSE–87–04 and should be submitted by April 10, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 13, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–6124 Filed 3–19–87; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Development Corporation of America (10% Subordinated Debentures Due 1993, and 12% Subordinated Debentures Due 1994) File No. 1–7591

March 12, 1987.

Development Corporation of America ("Company"), a Florida corporation, has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

On December 31, 1986, a wholly owned subsidiary of Lennar Corporation ("Lennar") acquired approximately 95.7% of the outstanding stock of the Company through a tender offer. The tender offer was made in accordance with a Plan and Agreement of Merger dated November 25, 1986, which contemplates that as promptly as practicable, the Lennar subsidiary will be merged into the Company in a transaction in which Lennar will become the sole shareholder of the Company, and the current shareholders of the Company, other than the Lennar subsidiary, will receive $15 per share in cash for their stock of the Company. An Information Statement relating to the merger was sent to the Company's shareholders on February 23, 1987. The merger is scheduled to take effect on March 17, 1987.

On February 17, 1987, there were only 61 holders of record of the 10% Debentures (of which $5,229,000 principal amount were outstanding) and 85 holders of the 12% Debentures (of

which $9,262,000 principal amount were outstanding).

The Board of Directors of the Company has determined that, because of the extremely small number of holders of each of the two issues of Debentures, and the very limited trading in the Debentures, once the Company's duty to file reports required by section 13(a) of the Exchange Act is suspended with respect to its common stock, the cost of continuing to file annual, quarterly and other reports under the Exchange Act solely because the Debentures are listed on the Amex will be much higher than can be justified.

Any interested person may, on or before April 3, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-6125 Filed 3-19-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-6623.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Use of Proceeds—Section 503/504
Form no.: SBA 1429
Frequency: One for each loan closed
Description of Respondents: Certified development companies are required to demonstrate that the 503/504 loan proceeds were used in accordance with program requirements.
Annual Responses: 1500
Annual Burden Hours: 375
Type of Request: Revision

Title: Compliance Review Report
Form no.: SBA 747
Frequency: Once during the life of the loan
Description of Respondents: This form is used for collecting data during the course of an on-site review to determine the compliance status of the recepient, to ascertain if technical assistance is needed, and to satisfy mandatory annual reporting requirements for Congress and budget purposes.
Annual Responses: 1000
Annual Burden Hours: 2000
Type of Request: Extension

Title: National Training Participant Evaluation Questionnaire
Form No.: SBA 20
Frequency: On occasion
Description of Respondents: This data is collected from participants in Business Development training and used to evaluate client satisfaction and participation.
Annual Responses: 40000
Annual Burden Hours: 10000
Type of Request: Revision

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business administration.

March 16, 1987.

[FR Doc. 87-6052 Filed 3-19-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0360]

Southwest Venture Corp.; Issuance of a Small Business Investment Company License

On February 15, 1986, a notice was published in the **Federal Register** stating that an application has been filed by Southwest Venture Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business March 16, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to seciton 301(C) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0360 on January 27, 1987, to Southwest Venture Corp. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 16, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-6051 Filed 3-19-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement; Utah and Wasatch Counties, UT; Notice of Intent

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement (SEIS) will be prepared for the proposed highway project, Utah Valley to Heber Valley in Utah and Wasatch Counties, Utah.

FOR FURTHER INFORMATION CONTACT: William R. Gedris, Environmental Coordinator, FHWA, 125 South State Street, P.O. Box 11563, Salt Lake City, Utah 84147, Telephone (801) 524-6446, or R. James Naegle, Engineer for Location and Environmental Studies, Utah Department of Transportation, (UDOT) 4501 South 2700 West, Salt Lake City, Utah 84119, Telephone (801) 965-4160.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the UDOT, will prepare a SEIS on a proposal to improve U.S. Highway 189 in Utah and Wasatch Counties, Utah. Termini for the route are: (1) The existing interchange of Interstate Route 15 with Utah Route 52 (800 North) in Orem on the west, and (2) the intersection of US–189 with US–40 in Heber City, approximately ½ mile south of that comminity's business district. Improvements to the 30 mile long corridor (as detailed in the 1978 Final EIS) are considered necessary to provide for the existing and projected traffic demands, improve safety, eliminate substandard geometrics and reduce maintenance costs.

Alternatives under consideration incldue (1) no build; (2) two-lane highway with intermittent passing lanes; (3) four-lane undivided highway; (4) four-lane divided highway; and (5) alternate alignments. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

A five mile section of the route, from the western terminus to Murdock Dam in Provo Canyon, has been improved to a four-lane facility. From Murdock Dam to Wildwood, various build alternatives as well as design variations of roadway cross sections will be reexamined. Between Wildwood and Heber City, a draft EIS was in progress (Notice of Intent published in **Federal Register**, January 30, 1986). Information from this draft EIS will be incorporated into the SEIS.

The SEIS is being prepared because (1) the agency has made substantial changes in the proposed action that are relevant to environmental concerns; and (2) there are significant new circumstances or information relevant to environmental concerns which bear on the proposed action.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, private organizations, and citizens who have previously expressed interest in this proposal. Scoping and public meetings, in addition to a formal public hearing, will be held from April to December, 1987. Public notice will be given of the time and place of the meetings and hearing. The draft SEIS will be available for public and agency review and comment.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the SEIS should be directed to the FHWA at the above address.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executie Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 11, 1987.

Daniel Dake,

P.E., Division Administrator, FHWA, Salt Lake City, Utah.

[FR Doc. 87–6016 Filed 3–19–87; 8:45 am]

BILLING CODE 4910–22–M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the private sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** January 30, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Pacific Island Journalists' Professional Skills Workshop: The Office of Private Sector Programs Initiative Grants/Bilateral Accords Division will develop a professional skills workshop (in English) for ten Pacific Island journalists representing Micronesia, Melanesia and Polynesia for 3 or 4 weeks, in August 1987. Concentrating on print and broadcast journalism (primarily radio) this workshop will develop basic research, layout and reporting skills for indigenous journalists selected by USIA representatives in Hawaii, Suva, Port Moresby and Wellington.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Futhermore, USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, DC 20547

Dated: March 10, 1987.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 87–6015 Filed 3–19–87; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 54
Friday, March 20, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, March 25, 1987.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Voluntary Standards Monitoring Policy

The staff will brief the Commission on options for monitoring industry conformance with voluntary standards; Attention will be focused on use of inspection warrants in monitoring conformance.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

March 17, 1987.

[FR Doc. 87–6185 Filed 3–18–87; 1:06 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:30 p.m., Thursday, March 26, 1987.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Cost Benefit Analysis

The staff will brief the Commission on the use of cost benefit analysis and other economic considerations in carrying out its compliance and enforcement activities.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATON, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301–492–6800.

March 17, 1987.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 87–6186 Filed 3–18–87; 1:06 p.m.]

BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, March 31, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. Report on Commission Operations (Optional)
3. Formal Opinion Letter Request from Congressman Claude Pepper Regarding Coverage Under ADEA for Appointed State Court Judges

Closed

1. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

This Notice Issued March 18, 1987.

Dated: March 18, 1987.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 87–6191 Filed 3–18–87; 3:04 pm]

BILLING CODE 6750-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Volume 52 No. 44, FR 7062, Friday, March 6, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, March 16, 1987.

CHANGE IN THE MEETING: The following item has been postponed from the open portion of the meeting and will be rescheduled at a later date:

Report on Commission Operations

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: March 12, 1987.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 87–6146 Filed 3–18–87; 10:42 am]

BILLING CODE 6750-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Volume 52, No. 50, Monday, March 16, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, March 23, 1987.

CHANGES IN THE MEETING: The following items were inadvertently omitted from the open portion of the meeting agenda:

Item #6, Proposed Compliance Manual, Section 14, Proposed Revisions to the Processing Procedures
Item #7, Proposed Compliance Manual, Section 22, Extended and Systemic Investigations Procedures
Item #8, Proposed Compliance Manual, Section 24, Investigatory Powers—Administrative Subpoenas
Item #9, Proposed Compliance Manual, Section 25, On Site Investigation
Item #10, Proposed Compliance Manual, Section 26, Proposed Revisions to Selection and Analysis of Evidence

The following item has been postponed and rescheduled for the March 31, 1987 Commission Meeting:

"Formal Opinion Letter Request from Congressman Claude Pepper Regarding Coverage Under ADEA for Appointed State Court Judges"

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: March 17, 1987.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 87-6147 Filed 3-18-87; 10:42 am]

BILLING CODE 6750-06-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 25, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

1. Marine Terminal Agreement Matters:
   —Docket No. 85-10—Marine Terminal Agreements;
   —Docket No. 85-22—Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984;
   —Waiver of Penalties Regarding Marine Terminal Service Agreements;
   —Proposed Nonadjudicatory Fact Finding.

Portion Closed to the Public

2. Agreement No. 212-011045: Trans-Atlantic Revenue Apportionment Agreement.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87-6166 Filed 3-18-87; 11:02 am]

BILLING CODE 6730-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 17, 1987.

TIME AND DATE: 10:00 a.m., Thursday, March 19, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commissioners will consider and act upon the following:

3. Secretary of Labor on behalf of Andy Brackner v. Jim Walter Resources, Inc., Docket No. SE 86-69-D. (Issues include consideration of petition for discretionary review).

4. Union Oil Company of California, Docket No. WEST 86-1-M. (Issues include consideration of petition for discretionary review).

It was determined by a unanimous vote of Commissioners that these items be included in the meeting and that no earlier announcement of the addition was possible. 5 U.S.C. 552b(e)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-6142 Filed 3-18-87; 9:59 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 25, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposal to terminate New York State's exemption from the Home Mortgage Disclosure Act and Regulation C (Home Mortgage Disclosure).
2. Proposed 1987 fee schedule for Federal agency book-entry security services.

Discussion Agenda

3. Proposed redeposit service for low-dollar return items in the Federal Reserve check collection service. (Proposed earlier for public comment; Docket No. R-0582)
4. Proposed revisions to the Board's Rules Regarding Availability of Information.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-6152 Filed 3-18-87; 10:29 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, March 25, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated March 17, 1987.

James McAfee,

Assoicate Secretary of the Board

[FR Doc. 87-6153 Filed 3-18-87; 10:29 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 54
Friday, March 20, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

Correction

In notice document 87-5623 appearing on page 8093 in the issue of Monday, March 16, 1987, in the first column, in the fourth line, "March 21, 1987" should read "March 31, 1987".:

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Program Announcement and Availability of Funds for Fiscal Year 1987 for Cooperative Agreements; Acquired Immunodeficiency Syndrome (AIDS) Prevention Projects

Correction

In notice document 87-4792 beginning on page 7028 in the issue of Friday, March 6, 1987, make the following corrections:

1. On page 7029, in the first column, in the first paragraph, in the last line, after "AIDS" insert "meeting the CDC surveillance case definition as set forth above.".

2. On the same page, in the second column, in paragraph (e), in the seventh line, "period" was misspelled, and in the last line "populations" should read "population".

3. On page 7032, in the third column, in paragraph (c)(4), in the last line, after "implementation" insert "and evaluation".

4. On page 7033, in the first column, under the heading "Review and Application Criteria", in the first paragraph, in the second line, "HER/RR" should read HE/RR".

5. In the same column, in paragraph (1)(e), in the second line, after "plan" insert "described".

6. In the second column, in paragraph (i), in the third line, after "instruments" insert "of measurement".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0003]

E.I. du Pont de Nemours and Co.; Filing of Food Additive Petition

Correction

In notice document 87-4346 appearing on page 6391 in the issue of Tuesday, March 3, 1987, make the following correction:

On page 6391, in the second column, in the **SUMMARY**, in the ninth line, "acd" should read "acid".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87M-0027]

Beiersdorf Inc.; Premarket Approval of Implast® Bone Cement

Correction

In notice document 87-4345 beginning on page 6391 in the issue of Tuesday, March 3, 1987, make the following corrections:

1. On page 6392, in the first column, in the **SUPPLEMENTARY INFORMATION**, in the fifth line, "Implast" should read "Implast®".

2. On the same page, in the same column, in the last paragraph, in the last line, "360(g))" should read "360e(g))".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Federal Old-Age, Survivors, and Disability Insurance Supplemental Security Income for the Aged, Blind, and Disabled; Vocational Rehabilitation and Employment Demonstration Priorities for Fiscal Year 1986; Recommendations for Priority Areas for Demonstrations

Correction

In notice document 87-5195 beginning on page 7320 in the issue of Tuesday, March 10, 1987, make the following correction:

On page 7321, in the first column, in the 13th line from the bottom of the column, "are not being evaluated" should read "are now being evaluated".

BILLING CODE 1505-01-D

federal register

Friday
March 20, 1987

Part II

Department of Health and Human Services

Office of Human Development Services

Runaway and Homeless Youth Program; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS/ACYF/RHYP 13.623-87-2]

Runaway and Homeless Youth Program: Availability of Financial Assistance

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of financial assistance to agencies serving runaway and homeless youth—grants for Basic Centers.

SUMMARY: The Family and Youth Services Bureau of the Administration for Children, Youth, and Families announces the availability of fiscal year 1987 funds for the Runaway and Homeless Youth Basic Center Grant Program.

Competition for new awards will not be possible in all States. See the Table of Allocations by State and the accompanying narrative (Part I, Section F, "Available Funds for Basic Centers") for explanation.

This program announcement consists of a Preamble plus five parts. Part I provides general or background considerations for potential applicants to the program. Part II provides requirements of the Runaway and Homeless Youth Act in regard to services and activities that must be carried out by grantees. Part III describes the application process. Part IV provides instructions for completing the program narrative of grant applications and also provides the criteria to be used in evaluating the applications. Part V provides appendices to be consulted during preparation of the application.

DATE: The deadline or closing date for receipt of all applications under this announcement is May 4, 1987.

ADDRESS: Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 341-F, Humphrey Building, Washington, D.C. 20201. Attn: William J. McCarron, HDS-87-ACYF/RHYP.

FOR FURTHER INFORMATION CONTACT: Dr. W. Ray Rackley, Administration for Children, Youth and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, D.C. 20013, Telephone: (202) 755-7800.

SUPPLEMENTARY INFORMATION:

Preamble

Runaway behavior and homelessness among youth continue to be major problems of national concern. The Department of Health and Human Services estimates that the number of such youth remains at more than one million. Youth increasingly are running away within the local area rather than interstate or across jurisdictions, although some localities do attract a high number of out-of-jurisdiction youth.

Reports from runaway youth centers indicate a growing proportion of youth arriving at the centers with multiple and complex problems. Substance abuse by youth; sexual abuse or physical abuse by adults; conflicts in school or with peers; and problems of teen pregnancy, prostitution and suicide all seem to be on the increase in youth appearing at centers.

Basic Centers funded under the Runaway and Homeless Youth Act (RHYA) share a number of common characteristics. All centers provide the basic services required under the law including temporary shelter, individual and family counseling, and aftercare. Also, through linkages and agreements with other agencies, other services are provided such as health, education, legal and employment services. Beyond these similarities, centers show considerable diversity in organization, management, scope and approach.

The basic purpose of RHYA funds is to enable centers to provide short-term, crisis intervention services for runaway and homeless youth.

For the past six years, appropriate responses to the needs of runaway and homeless youth have entailed the involvement of major segments, components, organizations, and agencies of local communities, including the private sector. OHDS policy has focused on the use of Federal resources to stimulate the establishment and growth of new agencies that can become viable with less or no further Federal support. This policy continues with this announcement. Since fiscal year 1983, 176 new runaway and homeless youth centers have been funded. (Thirty-four new grantees were funded in fiscal year 1986.) These centers have formed linkages with and obtained financial support from their communities.

For a number of years prior to fiscal year 1986, awards to Basic Centers were limited to one-year project periods, even though a number of the centers had been in operation for five, ten, or more years and contemplated continued operation in future years. In fiscal year 1986, a staggered, three-year funding cycle was initiated, with one-third of the awards having project periods of three years, one-third having project periods of two years, and one-third having project periods of one year. The emphasis on longer-term funding is continued in the present announcement. This year, we anticipate that all Basic Center awards under this announcement will be for three-year project periods.

Note: Basic Center grantees awarded two- or three-year project periods in fiscal year 1986 should *not* submit applications under this announcement. Separate continuation application kits will be sent to each of these multi-year grantees from the respective regional offices.

We recognize that some localities, because of climate, location, or other attraction for youth, have exceptionally high concentrations of runaway and homeless youth, beyond what could be expected from their local youth population. These high impact areas require special consideration and targeted funding for services and activities that go beyond what basic centers routinely can provide. In fiscal year 1986, as part of a long-term strategy to address this issue, six High Impact Supplemental Demonstration grants were awarded to centers addressing problems of substance abuse; sexual exploitation; chronic runaway behavior; services to military families; and older, homeless adolescents. Each of these grants has a three-year project period (with over two years remaining before project completion). Funding for additional projects in high impact areas is not included in this announcement.

Another part of OHDS policy has been the establishment of Coordinated Networks whose responsibilities include communication among centers, training and technical assistance, and a mechanism for dealing with State-level agencies and entities. In fiscal year 1986, funding was provided to ten Coordinated Networks, one in each of the ten Federal regions. Each award was for a two-year project period. These networks will continue to operate through September 1988; therefore, no new network grants will be funded under this announcement.

In summary, this announcement continues a funding strategy focused on: (1) Competition, (2) encouraging new grantees to enter the Runaway and Homeless Youth Center Program, (3) building strong community-based programs and reducing dependency on Federal funds, and (4) continuing longer

project periods for Basic Center programs.

Part I: General or Background Considerations

A. Scope of This Program Announcement

This program announcement solicits applications and describes the application process for Basic Center grants under the Runaway and Homeless Youth Program. These grants will be competitively awarded during the third and fourth quarters of fiscal year 1987. Project periods for the grants will be three years.

B. Legislative Authority

Grants under this program are authorized by the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5701 *et seq.* This Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), as amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95–115), the Juvenile Justice Amendments of 1980 (Pub. L. 96–509), and the Juvenile Justice Amendments of 1984 (Pub. L. 98–473). See 42 U.S.C. 5701 *et seq.*

C. Program Purpose

The purpose of the National Runaway and Homeless Youth Program is to provide financial assistance to establish or strengthen community-based centers that address the needs (e.g., outreach, temporary shelter, counseling, and aftercare services) of runaway and homeless youth and their families.

Programs receiving Runaway and Homeless Youth Act funding under this announcement are required to know and to adhere to the requirements of 45 CFR Part 1351, the Runaway Youth Program regulations. Applicants must develop their applications in accordance with those regulations and the supplementary instructions which are included in this announcement.

D. Program Goals and Objectives

The program goals and objectives of the Runaway and Homeless Youth Act are to assist runaway and homeless youth centers to: (a) Alleviate the problems of runaway and homeless youth, (b) reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services, (c) strengthen family relationships and encourage stable living conditions for youth, and (d) help youth decide upon constructive courses of action.

E. Non-Discrimination in Services

All services under this program, including temporary shelter, must be provided in accordance with 45 CFR Parts 80, 81, and 84 pertaining to non-discrimination under programs receiving Federal assistance.

F. Available Funds for Basic Centers

In fiscal year 1987, the Administration for Children, Youth, and Families expects to award approximately $19,407,051 in Basic Center grants. This total will be divided among the States according to their respective populations under the age of 18.

Approximately two-thirds of this total (or $12,736,787) will be awarded in the form of non-competing extensions (continuations) to current Basic Center grantees having one or two years remaining in their project periods. Grantees in this category will receive instructions from their respective regional offices on the procedures for applying for these extensions. These grantees should *not* apply for funds under this announcement.

In 15 jurisdictions, the entire State allocation will be awarded in the form of non-competing extensions (continuations) to current grantees. That is, each of these 15 jurisdictions will receive its full allocation as determined by the population in the State of children under the age of 18. However, the entire allocation in each case will be distributed as continuation funding among grantees that received multi-year awards in fiscal year 1986. In these jurisdictions, no funds will remain in fiscal year 1987 for awards to new grantees. The 15 States in which there will be no competition in fiscal year 1987 are Maine, Vermont, Delaware, District of Columbia, Maryland, West Virginia, Kentucky, Wisconsin, Arkansas, Montana, North Dakota, Wyoming, Arizona, Hawaii, and Idaho. Funding for new awards will be available in all other jurisdictions. (Refer to the Table of Allocations by State.)

Approximately one-third of the total funds (or $6,670,264) will be awarded in the form of *new* grants according to the procedures outlined in this announcement.

Approximately 100 *new* Basic Center grants will be awarded. Award recipients may include current grantees having project periods ending by September 30, 1987, and new applicants.

New Basic Center grant awards will be made from late June, 1987, through the end of September, 1987.

All grant applicants should request three-year project periods.

Funding recommendations for the new Basic Center applications will be based on the scores assigned to the applications by the non-Federal reviewers who will evaluate each application according to the criteria described in Part IV below, and on input from ACYF staff in the regional offices and in Washington, D.C. Final decisions will be made by the Commissioner of ACYF.

While the project periods assigned to successful applicants will be for three years, initial awards of grant funds will be for only one year. Subsequent awards of funds will depend upon satisfactory performance by the grantees and on the availability of appropriated funds.

The number of new Basic Center grants awarded within each State will depend upon the State's allocation for new grants and on the number of acceptable applications. All applicants under this announcement will compete with other applicants in the State in which their services will be provided. In the event that an insufficient number of applications meeting the minimum criteria for funding is submitted from within any State or jurisdiction, the Commissioner, ACYF, may reallocate any unused funds.

The following table indicates the fiscal year 1987 allocations for each State. In this table, the amount (if any) shown in the column labeled "New Awards" is the amount available for competition in each State in fiscal year 1987. A zero (-0-) in that column means that no applications from that State will be considered under this announcement because the entire State allocation (as shown in the Totals column) has been set aside for non-competing (continuation) awards, as explained above.

RUNAWAY AND HOMELESS YOUTH CENTERS; TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdictions—Fiscal Year 1987]

Regions/States	Continuations	New awards	Totals
Region I			
Connecticut	$156,562	$71,149	$227,711
Maine	91,566	0	91,566
Massachusetts	221,514	189,329	410,843
New Hampshire	56,356	19,849	76,205
Rhode Island	0	67,771	67,771
Vermont	42,169	0	42,169
Region II			
New Jersey	516,988	44,156	561,144
New York	908,498	407,163	1,315,661
Puerto Rico	74,969	301,235	376,204
Virgin Islands	0	13,855	13,855
Region III			
Delaware	47,289	0	47,289
District of Columbia	39,759	0	39,759
Maryland	330,421	0	330,421
Pennsylvania	576,043	290,824	866,867
Virginia	292,650	142,591	435,241

RUNAWAY AND HOMELESS YOUTH CENTERS; TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdictions—Fiscal Year 1987]

Regions/States	Continuations	New awards	Totals
West Virginia	155,723	0	155,723
Region IV			
Alabama	309,191	26,953	336,144
Florida	581,429	182,426	763,855
Georgia	326,691	172,706	499,397
Kentucky	308,132	0	308,132
Mississippi	0	237,650	237,650
North Carolina	271,378	207,236	478,614
South Carolina	0	277,711	277,711
Tennessee	114,841	256,243	371,084
Region V			
Illinois	876,393	57,040	933,433
Indiana	228,575	225,039	453,614
Michigan	265,133	482,758	747,891
Minnesota	180,460	162,612	343,072
Ohio	672,531	192,830	865,361
Wisconsin	386,747	0	386,747
Region VI			
Arkansas	194,277	0	194,277
Louisiana	148,766	259,366	408,132
New Mexico	70,247	64,693	134,940
Oklahoma	210,718	67,896	278,614
Texas	889,276	555,602	1,444,878
Region VII			
Iowa	130,000	102,831	232,831
Kansas	108,896	91,706	200,602
Missouri	285,628	114,070	399,698
Nebraska	47,664	86,974	134,638
Region VIII			
Colorado	157,213	103,028	260,241
Montana	70,482	0	70,482
North Dakota	59,337	0	59,337
South Dakota	45,000	17,048	62,048
Utah	0	184,940	184,940
Wyoming	48,193	0	48,193
Region IX			
Arizona	263,554	0	263,554
California	1,633,220	427,019	2,060,239
Hawaii	87,349	0	87,349
Nevada	0	66,265	66,265
American Samoa	0	5,120	5,120
Guam	0	14,759	14,759
Northern Marianas	0	2,711	2,711
Federated States of Micronesia	0	8,748	8,748
Marshall Islands	0	3,947	3,947
Palau	0	1,302	1,302
Region X			
Alaska	21,872	29,333	51,205
Idaho	97,289	0	97,289
Oregon	178,759	35,397	214,156
Washington	243,000	112,422	355,422
Totals	13,022,748	6,384,303	19,407,051

Part II. Requirements of the Runaway and Homeless Youth Act

Section 311(a), 42 U.S.C. 5711(a), of the Runaway and Homeless Youth Act requires that grants shall be made among the States based upon their respective populations of youth under 18 years of age for the purpose of developing or strengthening local facilities to deal primarily with immediate needs of runaway or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grants shall be determined by the number of such youth in the community and the availability of existing services. Among applicants, priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.

Section 312(a), 42 U.S.C. 5712(a), of the Act requires that, to be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway center (a locally controlled facility providing temporary shelter) and counseling services to juveniles who have left home without permission of their parents or guardians, or to other homeless juveniles.

Section 312(b), 42 U.S.C. 5712(b), of the Act requires that, in order to qualify for assistance under this part, an applicant shall submit a plan to the Secretary meeting the following requirements and including the following information. Each center:

(1) Shall be located in an area which is demonstrably frequented by or easily reachable by runaway youth;

(2) Shall have a maximum capacity of no more than twenty children with a ratio of staff to children of sufficient proportion to assure adequate supervision and treatment;

(3) Shall develop adequate plans for contacting the child's parents or relatives and assuring the safe return of the child according to the best interests of the child, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway and homeless youth center, and for providing for other appropriate alternative living arrangements;

(4) Shall develop an adequate plan for assuring proper relations with law enforcement personnel, social service personnel, school system personnel, and welfare personnel, and the return of runaway youth from correctional institutions;

(5) Shall develop an adequate plan for aftercare counseling involving runaway youth and their families within the State in which the runaway and homeless youth center is located and for assuring, when possible, that aftercare services will be provided to those children who are returned to any State other than the State in which the center is located;

(6) Shall keep adequate statistical records profiling the children and family members which it serves, except that records maintained on individual runaway youths shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway youths;

(7) Shall submit annual reports to the Secretary detailing how the center has been able to meet the goals of its plans and reporting the statistical summaries required by paragraph (6);

(8) Shall demonstrate its ability to operate under the accounting procedures and fiscal control devices as required by the Secretary;

(9) Shall submit a budget estimate with respect to the plan submitted by each center under this subsection; and

(10) Shall supply such other information as the Secretary reasonably deems necessary.

Section 313, 42 U.S.C. 5713, of the Act requires that an application by a State, locality, or private entity for a grant under this part may be approved by the Secretary only if it is consistent with the applicable provisions of this part and meets the requirements set forth in section 312. Priority shall be given to grants smaller than $150,000. In considering grant applications under this part, priority shall be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families.

Section 321, 42 U.S.C. 5731, of the Act requires that records containing the identity of individual youths pursuant to this Act may under no circumstances be disclosed or transferred to any individual or to any public or private agency.

Other standards which Runaway and Homeless Youth Basic Center grantees are expected to meet are found in the Program Performance Standards (Attachment C).

Part III. Application Process

A. Eligible Applicants

States, localities, private for-profit and private non-profit agencies, and coordinated networks of such agencies are eligible to apply for Runaway and Homeless Youth Program basic center grants under this announcement unless they are part of the law enforcement structure or the juvenile justice system. States are defined to include any State of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the Virgin Islands; Guam; American Samoa; the Commonwealth of the Northern Mariana Islands; and the successor entities of the Trust Territory of the Pacific Islands: the Republic of the

Marshall Islands, the Federated States of Micronesia, and Palau (see 42 U.S.C. 5603 (7)). Federally recognized Indian Tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private non-profit agencies.

Applicants are reminded that Basic Center grants may be awarded to agencies which operate a central shelter facility, *or* to agencies which provide emergency shelter through a series of host homes, *or* to agencies which employ a combination of shelter facility(ies) and host homes. Host homes are facilities providing short-term shelter, usually the home of a family, under contract to accept runaway and homeless youth assigned by the Basic Center grantee, usually for a nominal fee, and licensed according to State or local laws.

B. Assistance to Prospective Grantees

Potential grantees can receive informational assistance in developing applications from the appropriate ACYF regional youth contacts listed in Appendix E or from the Family and Youth Services Bureau in Washington, DC (see above for address). Organizations may also receive information from the appropriate Coordinated Network grantee listed in Appendix F.

C. Application Kit

As a further aid to applicants and those considering submitting an application, an Application Kit is available from the Family and Youth Services Bureau in Washington. The Application Kit contains a copy of the Runaway and Homeless Youth Act, Questions and Answers on the FY 1987 Funding Cycle, a copy of the Runaway and Homeless Youth Program Regulations, and a copy of the Runaway and Homeless Youth Program Fact Sheet. To obtain an Application Kit, call (202) 755–7800 or write to: The Runaway and Homeless Youth Program, Program Operations Division, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013.

D. Application Requirements

To be considered for a Runaway and Homeless Youth Basic Center grant, each application must be submitted on the forms provided at the end of this announcement and in accordance with the guidance provided herein. The application must be signed by an individual authorized to act for the applicant agency and authorized to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

E. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alaska, Idaho, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

Therefore, the comment period for State processes will end on July 20, 1987, to allow time for HDS to review, consider and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Ave., SW., Room 341F, Hubert H. Humphrey Building, Washington, DC 20201, Attn: William J. McCarron.

A list of the single points of contact for each State and territory is included at the end of this announcement.

F. Availability of Forms

A copy of each form required to submit an application for a grant under the Runaway and Homeless Youth Program, and instructions for completing the application, are provided in Appendices A and B. The Program Performance Standards and a description of the National Runaway Switchboard are included at the end of this announcement as Appendix C. Addresses of the State Single Points of Contact (SPOCs) to which applicants should submit review copies of their proposals are listed in Appendix D. Grantees must comply with the requirements of Title III of Pub. L. 98–473, the Runaway and Homeless Youth Act, 42 U.S.C. 5701 *et seq.*, and with the Code of Federal Regulations (CFR) Title 45, Part 1351, Runaway Youth Program. Copies of the Act and the Regulations may be found in major public libraries and at the regional offices listed in Appendix E at the end of this announcement. Additional copies of this announcement may be obtained from the regional offices or from the information contact person listed at the beginning of the announcement. Further general information may be obtained from the Coordinated Networks listed in Appendix F. A listing of all current multi-year Basic Center grantees, with the project period expiration date of each, is presented in Appendix G.

G. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined below. This review will be conducted in Washington, DC. The initial review will be conducted by teams of non-Federal experts knowledgeable in the areas of youth development and/or human service programs. These experts will review applications to determine that applicants will conform to the requirements of the Act (see Part II of this announcement) and the Program Performance Standards. Then they will use the criteria presented below to assign a score to each application. The non-Federal reviewers will be from States other than the one from which applications are being reviewed. The results of the competitive review will be analyzed by Federal staff and taken into

consideration by the Associate Commissioner of the Family and Youth Services Bureau who, in consultation with ACYF regional officials, will recommend projects to be funded. The ACYF Commissioner will make the final selection of the applicants to be funded. The Commissioner may elect not to fund any applicants that have known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services. The Commissioner also will give preference to applicants proposing to work in geographic areas outside those areas now served by Basic Center grantees with multi-year project periods extending into fiscal year 1988 (that is, with project periods extending beyond September 30, 1987). (Refer to Appendix G for current Basic Center expiration dates.)

In negotiating the final budgets for successful applicants, consideration will be given to the needs expressed in the application, the number of runaway or homeless youth in the community in which the project will be located, the existing availability of services designed to provide for the immediate needs of runaway or homeless youth and their families in the community, and the range and types of services proposed.

Successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided. Organizations whose applications have been disapproved will be notified in writing of that decision.

H. Grantee Share of the Project

The Runaway and Homeless Youth Act requires a ten percent match of the Federal funds requested (line 12a of SF Form 424) on all grants funded under this announcement (42 U.S.C. 5716, 45 CFR 1351.13). For example, a total Federal amount of $100,000 (line 12a) must be matched by at least a $10,000 non-Federal share (line 12b), for a total cost of at least $110,000. The non-Federal portion may be cash, in-kind contributions or grantee-incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles provided in 45 CFR Part 74, the Department's regulations on the Administration of Grants. For-profit applicants are reminded of the prohibition against profits in the use of grant funds (45 CFR 74.705).

I. Instructions for Completing the Application

1. Contents of Application. Each copy of the application must contain the following items in the order listed:

a. Standard Form 424 (page 1)
b. Project Abstract (page 2)
c. Part II—Project Approval Information (page 3)
d. Part III—Budget Information (pages 4, 5)
e. Part IV—Project Narrative (pages 6 and following, as appropriate)
f. Part V—Plans and Assurances (paginate as appropriate)
g. Application Certification for Profit-Making Organizations (paginate as appropriate)
h. Supporting Documents (if any, paginate as appropriate)

2. Instructions for Preparing Application. Prepare your application in accordance with the following instructions:

a. Standard Form 424 (page 1). Follow instructions in Appendix B.
b. Project Abstract (page 2). Self-explanatory.
c. Part II—Project Approval Information (page 3). Self-explanatory.
d. Part III—Budget Information (pages 4–5). Follow instructions in Appendix B.
e. Part IV—Project Narrative (pages 6 and following). Instructions for completing the project narrative are found below.
f. Plans and Assurances
(1) HHS–SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964. Self-explanatory.
(2) HHS–SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, as amended. Self-explanatory.
g. Application Certification for Profit-Making Organizations. Self-explanatory.
h. Supporting Documentation
Applicants may attach only photocopies (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies, which would give further support to the application. *Resumes must be limited to one page.*

The absolute maximum for supporting documentation is 10 pages, exclusive of letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers. Applicants may include as many letters of support or agreement as are appropriate.

Note: Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate subsections of the application, including supporting documentation.

J. Application Submission

To be considered for a grant, an applicant must submit one signed original and two copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures. Each copy should be stapled (back and front) in the upper left corner. All copies of a single application should be submitted in a single package.

Closing Date for the Receipt of Applications

The closing date for receipt of applications under this announcement is: May 4, 1987. Applications must be mailed or hand delivered to: HHS/Division of Grants and Contracts Management, 200 Independence Avenue, SW., Room 341–F, Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS–87–ACYF/RHYP.

Deadline for Submission of Applications

A. Hand delivered applications will be accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address, or

2. Sent on or before the deadline date, and received by the granting agency in time to be considered during the competitive review and evaluation process.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

B. Late applications. Applications which do not meet the criteria in paragraph A of this section are considered late applications. HDS will notify each late applicant that its application will not be considered in the current competition.

C. Extension of deadline. HDS may extend the deadline for all applicants because of acts of God such as floods or hurricanes, when there is a widespread disruption of the mails or when HDS

determines an extension to be in the best interests of the government. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Part IV. Program Narrative and Review Criteria

Prepare the narrative section in accordance with the following instructions, *using the same captions and numbering system.* The program narrative should be clear and concise, and should not exceed 25 single-spaced pages plus such necessary attachments as organization charts, resumes, and letters of agreement and support. The portion of any program narrative that ACYF staff determine as exceeding these limits will not be presented to the independent panel reviewers.

1. *Objectives and need for this assistance* (15 points).

State the specific objectives and needs addressed by the project in terms of its significance and its applicability to objectives of the project. Provide a discussion of the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. Indicate goals or service objectives of the proposal. Supporting documentation or other testimonials from concerned interests other than the applicant may be used. Any relevant data must be summarized, evaluated and related to the proposed project.

2. *Results or benefits expected (beneficial impact)* (10 points).

Identify the results and benefits—for target groups and programs—to be derived from implementing the proposed project.

3. *Approach (project implementation plan)* (35 points).

Tasks to be performed (15 points)

Provide major milestones of events and activities and a timetable for completion, including the time commitments of all key staff.

Design and Methodology (15 points).

Identify the specific problem(s), issue(s), and objectives of the proposal and provide a detailed discussion of how the approach provided for will accomplish these project objectives. The methodology, plan, design, or other appropriate techniques to be used should be fully described.

Evaluation (5 points).

Where appropriate, describe in detail the evaluation plans and procedures capable of measuring the degree to which project objectives have been accomplished.

4. *Geographic location* (5 points).

Give the precise location of the project or area to be served by the proposed project. Maps or other graphic aids may be included.

5. *Staffing and management* (20 points).

Staffing Pattern (5 points).

Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contribution to be made by senior staff.

Competence of Staff (10 points).

Indicate the qualifications of the project team, the variety of skills to be used, relevant experience, educational background, and the demonstrated ability to produce final results.

Adequacy of Resources (5 points).

Specify the adequacy of the facilities, resources and organizational experience with regard to the tasks of the proposed project.

6. *Budget appropriateness and reasonableness* (15 points).

Budget (10 points).

Relate the proposed budget to the level of effort required to attain project objectives. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Assurances (5 points).

Discuss collaborative efforts with other agencies or organizations. Written assurances should be included with the application if available.

(Catalog of Federal Domestic Assistance Number 13.623, Runaway and Homeless Youth Program)

Dated: February 12, 1987.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: March 2, 1987.

Jean K. Elder,

Assistant Secretary-Designate for Human Development Services.

Appendix A: Forms and Assurances
Appendix B: Instructions for Applying for Federal Assistance From HDS Programs
Appendix C: Program Performance Standards; National Runaway Switchboard Project Description
Appendix D: State Single Points of Contact (SPOCS)
Appendix E: Regional Youth Contacts
Appendix F: Coordinated Networks
Appendix G: Current Multi-Year Basic Center Grantees

BILLING CODE 4130-01-M

APPENDIX A

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION *(Mark appropriate box)*
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER *NOTE: TO BE ASSIGNED BY STATE*
- a. NUMBER
- b. DATE ASSIGNED *Year month day* 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name .
- b. Organization Unit .
- c. Street/P.O. Box .
- d. City . e. County
- f. State . g. ZIP Code.
- h. Contact Person *(Name & Telephone No.)* .

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM *(From CFDA)*
- a. NUMBER ☐☐.☐☐☐
- MULTIPLE ☐
- b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other *(Specify)*:
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT *(Names of cities, counties, states, etc.)*

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

15. PROJECT START DATE *Year month day* 19

16. PROJECT DURATION *Months*

17. DATE DUE TO FEDERAL AGENCY ► *Year month day* 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE *(For 14c or 14e)*
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other *(Specify)*:
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED *Year month day* 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► *Year month day* 19

30. STARTING DATE *Year month date* 19

31. CONTACT FOR ADDITIONAL INFORMATION *(Name and telephone number)*

32. ENDING DATE *Year month date* 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No

Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No (Attach Documentation)

Name of Agency or Board _____

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No

Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No

Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No

Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No

See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No

See instructions for additional information to be provided.

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PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

   Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

Appendix B—Instructions for Applying for Federal Assistance From HDS Programs

Introduction

Use of Forms

The forms included in this "kit" shall be used to apply for all new discretionary grants and cooperative agreements awarded by the Office of Human Development Services. They shall also be used to request supplemental assistance, proposed changes or amendments, and request continuation or refunding for previously approved grants or cooperative agreements from the Office of Human Development Services. An original and two copies of the forms should be submitted to the responsible grants management office. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

Applications

Applicants for new awards and competing continuations are required to submit a complete application which consists of Part I (SF–424) through Part V. Applicants for new projects must include completed Standard Forms 441, Civil Rights Assurance, and HHS–641, Rehabilitation Act Assurance. Applicants for additional funding (such as a non-competing continuation or supplemental grant) or amendments to a previously submitted application should include only affected pages. Previously submitted pages whose information is still current need not be resubmitted. Additionally, applicants for certain HDS programs may be subject to Executive Order 12372, Intergovermental Review of Federal Programs (see Attachments 1 and 2). These applicants must follow the instructions provided relative to Executive Order 12372 coverage where appropriate, as listed on page 11.

Submission of Applicants

(1) Non-competing Continuation Grants—Applicants for continuation grants must submit these forms not later than 90 days prior to the budget period end date.

(2) New Projects and Competing Continuations—Applicants for Assistance to support new projects or for competing continuations should refer to program announcements for information regarding deadline dates for submission of forms.

Section I

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk (*) and use Section IV. An explanation follows for each item.

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A–102 and HDS program instructions. Use of the SF–424 as a Notice of Intent is a State option. HDS does not require Notice of Intent.

2a. Applicant's own control number, if desired.

2b. Date application is signed.

3a. For a program covered by Executive Order 12372, enter the number assigned, if any, by the State Single Point of Contact. Applications submitted to OHDS must contain this identifier, if provided by the State Single Point of Contact. Note: Item 22 of this form must be completed for programs covered by E.O. 12372.

3b. Date identifier is assigned by State.

4a.-4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER AND DHHS ENTITY NUMBER.

If an individual's name and/or title is desired on the payment instrument, the name/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by the Internal Revenue Service. If the applicant organization has been assigned a DHHS Entity Number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full Entity Number. If applicant has other grants with DHHS and has been assigned a Paye Identification Number, enter PIN in parenthesis ( ) beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint funding) check "multiple" and explain in Section IV, remarks. If unknown, cite Public Law or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate if necessary.

7. Enter title and appropriate description of project. For Notification of Intent, continue in Section IV if necessary to convey proper description. If project affects particular sites as, for example, construction of real property projects, attach a map showing the project location.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments. *Note:* Non-profit organizations which have not previously received HDS program support must submit proof of nonprofit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit is affected, list it rather than subunits.

10. Identify estimated number of persons *directly* benefiting from project, as described in the program narrative.

11. All applicants for new, competing continuation and non-competing continuation grants should enter the letter "A". And applicants for supplemental grant funding should enter the letter "B". For proposed changes or amendments, enter "E".

12. Enter amount requested or to be contributed during the initial funding/budget period by each contributor. Where allowable the value of in-kind contributions should be included. If the action is a change in dollar amount of existing grant (a revision or augumentation), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding use totals and show program breakdowns in remarks. Item definition: 12a, amount requested from Federal Government; 12b, amount from local government, if applicant is not a local government; 12e, amount from any other sources, explain in Section IV.

13a. Self explanatory. Enter the appropriate Congressional District number(s). If the State has only one Congressional District, enter "at large".

13b. Enter the district(s) where most of the actual work will be accomplished. If city-wide or State-wide covering several districts, write "city-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

A. *New.* A submittal for the first time for a new project or project period (includes competing continuations).

B. *Renewal.* Not applicable to HDS grant programs.

C. *Revision.* A modification to project after the initial funding/budget period and within the approved project period.

D. *Continuation.* Support for a non-competing continuation project after the initial funding/budget period and within the approved project period.

E. *Augumentation.* (Referred to elsewhere in these instructions and in other HDS publications as a "supplemental"). An application for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, explain in Part IV.

16. Enter estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14C), or augumentations (Supplements) (Item 14E).

18. Date application/preapplication must be submitted to HDS in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Enter existing HDS award number from item 3 of the Notice of Financial Assistance Awarded if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

Section II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b. An explanation follows for each item.

22a. Complete if application is subject to Executive Order 12372 (State review and comment). Note: All written comments submitted by or through the State Contact must be attached, if available. Applicants are advised of the delay of funding near the end of the fiscal year, if a timely notification to the State Contact is not made.

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory. *Note:* The authorized representative signature cannot be signed by designee.

Note. Applicant Completes Only Sections I and II. Section III is Completed by Federal Agencies.

Instructions for Completion of Part II

Negative answers will not require an explanation unless the responsible HDS program office requests more information at a later date. All "Yes"answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained. If the application is covered by Executive Order 12372, this item should be completed.

Item 4—Show whether the approved comprehensive plan is State, local or regional; or, if none, of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plain is not available, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations").

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions, if additional data is needed.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source. If this application is for a non-competing continuation, a supplement or a revision, do not refer to the prior or current HDS award.

Instructions for Completion of Part III

This form is designed so that application can be made for funds to support one or more functions or activities. Generally, HHS funded programs do not require a breakdown by function or activity. Therefore, only Line 1 need be completed. However, Head Start, funded by the Administration for Children, Youth and Families requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1–4 under Section A and Columns 1–4 under Section B).

Since HDS programs award funds to support activities for budget periods which are generally 12 months in duration, Section A, B, C, and D must provide budget information for the requested budget period. Section E should reflect the need for Federal Assistance in subsequent budget periods.

Applicants for research grants are not required to complete information items related to non-Federal share. Rather, research cost sharing shall be negotiated separately with the funding office.

Section A—Budget Summary

Lines 1–4

Col. (a): For applications pertaining to a single grant program and *not* requiring a functional activity or program account breakout enter on Line 1 under Column (a) the Federal Domestic Assistance Catalog program title (See attached listing). For "Head Start", enter the activities (program accounts) name for which funds are being requested on separate lines.

Col. (b): Enter appropriate Catalog of Federal Domestic Assistance number. For "Head Start", enter the activities (program accounts) number for which funds are being requested on separate lines.

Col. (c)–(g): For *new applications,* leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the first budget period.

For *non-competing,* or *competing continuation applications,* enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the current budget period. Enter in columns (e), (f), and (g) the appropriate amounts needed to support the project for the new budget period. (Column (g) should equal the total of Column (e) and Column (f).)

For *augumentation* (supplements) *and changes to existing grants*, leave Columns (c) and (d) blank and enter in Columns (e) and (f) the amount of increase or decrease of Federal and non-Federal funds, as appropriate. Enter in Column (g) the new total budgeted amount (Federal and non-Federal) which includes the previously authorized total budgeted amounts for the current budget period plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of the amounts in Columns (e) and (f).

Enter the total for all columns completed.

Section B—Budget Categories

Column 1–5

In the Column heading (1) through (4), enter the same titles of the grant programs and/or program accounts shown on Lines 1 through 4, Column (a), Section A. For each grant program or activity (program account) enter in Columns (1) through (4) enter the total requirements for *Federal funds* by object class categories and enter total in Column 5.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74 and the HDS Grants Administration Manual.

Personnel—Line 6a: Enter the total cost of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies. (See Section F, Line 21, for additional requirements).

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate. Provide break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, F.I.C.A., retirement insurance, etc.

Travel—Line 6c: Enter total costs of out-of-town travel (travel requiring per diem) for employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requsted travel costs. (See Line 6h and Section F, Line 21, for additional instructions.)

Equipment—Line 6d: Enter the total costs of all equipment to be acquired by the project. "Equipment" means an article of tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of equipment, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F., Line 21 for additional requirements.)

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.), and, (2) contracts agreements with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization; the purpose of the contract; statement (scope) of work; period of performance; and the estimated dollar amount of the award. If the name of contractor, scope of work and estimated total is not available or has not been negotiated, inlcude in Line h, "Other". (Note: Whenever the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegated agency by agency title, along with the required supporting information referenced in the applicable instructions. The total cost of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of alterations or renovation. Provide narrative justification and break-down of costs. New construction is unallowable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Lines 6i: Show the totals of Line 6(a) through 6(h).

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none". This line should be used only when the applicant (except local governments) has an indirect cost rate approved by the Department of Health and Human Services. Applicant should enclose a copy of the current negotiated agreement. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments, the reimbursement of indirect costs will be limited to the lesser of actual indirect costs of 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alteration and renovations. *It shold be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.*

Total—Line 6k: Enter the amounts of Lines 6(i) and 6(j). For all new competing and non-competing continuation applications, the total amount shown in Column (5), Line 6(k), should be the same as the amount shown in Section A, Column (e), Line 5.

For all supplements or changes, the total of the amount shown in Columns (1) through (4) should equal the amount shown in section A, line 5(e). The amount shown in Column (5) should include the cumulative total of the previously approved Federal share for the current budget period plus or minus, as appropriate, the increase or decrease of Federal funds.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show the nature and source of income, in the program narrative statement.

Section C—Non-Federal Resources

Line 8–11: Enter amounts of non-Federal resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in-kind. If in-kind is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space (use only), including number of square feet and value assigned per square foot; and

(3) Determination of depreciation or use allowance for grantee-owned space; [include statement specifying whether space was purchased or constructed, totally or in part with federal funds for items (2) and (3)].

(4) Type and value of other in-kind contributions expected.

Column (a): Enter the program title or activities (program accounts) as in Column (a) Section A.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the totals of Columns (b), (c), and (d).

Line 12—Enter total of each of Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Projects

Line 16-19—Enter in Column (a) the same program title or activities (program accounts) as in Column (a) Section A. For new or competing continuation or non-competing continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding budget periods (usually in years). Do not enter current year budget amount; enter second, third, fourth, and fifth year budget estimate needs. This Section need not be completed for Headstart applicants with indefinite project periods or for revisions or supplements for the current budget period which do not increase the general level of support.

Line 20—Enter the totals of each of the Columns (b) through (e).

Section F—Other Budget Information

Line 21—Use this space to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the HDS program office. Budget items which require identification and justification shall include, but not be limited to, the following:

1. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative.

2. Travel requiring per diem and foreign travel, number of trips traveled, destinations, length of stay, transportation cost, subsistence allowance, purpose of trip.

3. A list of all equipment (See Part III, Section B, Line 6d) and estimated cost of each item to be purchased. Need for equipment must be supported in program narrative.

4. Contractual: Major items or groups of smaller items; and

5. Other: group and major categories, e.g., consultants, local transportation, space rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22—Enter the type of indirect cost rate (provisional, final, fixed or predetermined) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense. Also, enter the date HDS approved the rate, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanation required or deemed necessary.

Attachment 1—Executive Order 12372 Coverage

1. General

Executive Order 12372, "Intergovernmental Review of Federal Programs," provides for the State and local government coordination and review of proposed Federal financial assistance. Certain applicants for HDS grants must comply with the provisions of E.O. 12372 and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." The following table provides a listing of all HDS assistance programs identified by Catalog of Federal Domestic Assistance Number (CFDA), and shows those programs and activities which are covered by E.O. 12372 and those which are exempt from coverage.

Federally recognized Indian Tribes are exempt from the provisions and requirements of E.O. 12372 (see 48 *FR* 29196 dated June 24, 1983).

States design their own processes for reviewing and commenting on proposed Federal assistance under certain Federal programs. States adopting a review process under the E.O. have designated a State official or organization to act as the State's "Single Point of Contact" (SPOC) for sending official State recommendations to HDS. Applicants with projects subject to E.O. 12372 review must adhere to the requirements of their State processes.

2. Procedures for New and Competing Continuation Applications

E.O. 12372 requires applicants for new and competing continuation grants and cooperative agreements to coordinate their plans at the State and local levels through the State SPOC. Names and addresses of the State SPOC are listed in the **Federal Register** announcement soliciting applications or in the application kit. A current listing can also be obtained from the regional or headquarters grants management office. Potential applicants should contact their State SPOC at the earliest feasible time and notify them of their intent to apply for Federal assistance. Many State offices have their own notification forms and instructions, and applicants should obtain this material directly from them.

Applications covered by E.O. 12372 must show E.O. 12372 certification in Item 22 on Standard Form 424. HDS will notify the State SPOC of any application covered by E.O. 12372 that does not indicate that the State contact has had an opportunity to review it. Therefore, failure to notify the State of the proposed application to HDS may result in a delay of funding.

State SPOC offices have sixty (60) days after the HDS deadline date for the receipt of applications in which to review and resolve problems with the applicant and submit comments to HDS.

3. Procedures for Non-Competing Continuation Applications

Applicants for non-competing continuations of awards covered by E.O. 12372 must contact the State SPOC regarding their application at the earliest possible time. Applications submitted to HDS must show the E.O. 12372 certification in Item 22 on the Standard Form 424. HDS will notify the State SPOC of the receipt of any covered program application which has no indication that the State process has had an opportunity for review.

The closing date for submission of State comments is thirty (30) days after the deadline date for receipt of applications. Applicants are advised to make clear to the SPOC that they are applying for a non-competing continuation award with a thirty day rather than a sixty (60) day review period.

ATTACHMENT 2—HDS PROGRAMS AND ACTIVITIES COVERED BY EXECUTIVE ORDER 12372

Catalog of Federal domestic assistance no.	Discretionary grants	Mandatory or formula grants
13.600	Head Start—Basic Head Start Program, Research, Training and Technical Assistance, Demonstration, and Pilot Projects.	
13.623	Runaway Youth—All projects	
13.630		Developmental Disabilities—Basic Support and Advocacy.
13.631	Developmental Disabilities Special Projects	
13.633		Aging—Title III-B, Grants for Supportive Services and Senior Centers.
13.635		Aging—Title III-C, Nutrition Services.
13.645		Child Welfare Services—Title IV-B State Grants.
13.646		Work Incentive Program (WIN).
13.669		State Child Abuse and Neglect Prevention and Treatment.
13.670	Child Abuse and Neglect Prevention and Treatment—All Projects.	
13.608	Child Welfare Research & Demonstration Section 426 of Social Security Act (SSA).	
13.612	Native American Programs—Financial Assistance	
13.632	Developmental Disabilities—University Affiliated Facilities and Satellite Centers.	
13.647	Social Services Research and Demonstration—Section 1110 of SSA.	
13.648	Child Welfare Services (426) Training	
13.652	Adoption Opportunities—Research & Demonstration	
13.655	Aging—Title VI Grants top Indian Tribes	
13.658		Title IV-E—Foster Care.
13.659		Title IV-E—Adoption Assistance.
13.661	Native American Programs—Research, Demonstration, and Evaluation.	
13.662	Native American Programs—Training and Technical Assistance.	
13.667		Social Services Block Grant.
13.668	Aging—Title IV Research, Demonstration, & Training	

I. Overview of Program Performance Standards

Appendix C

The program performance standards established by the Bureau for its funded centers relate to the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served. The program performance standards, and the related criteria and indicators, as initially published in March 1977, were developed by the Bureau through a functional analysis of the service and administrative components of the runaway youth projects, and were revised based upon the comments and feedback provided by the FY 1975 funded projects; they have subsequently been further revised, based upon the experience of the Bureau and its funded centers in their implementation. The standards relate to the basic program components enumerated in Section 317 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act.

The terms "program performance standard," "criterion," and "indicators" are used throughout both the instrument and the instructions. These terms are defined as follows:

Program Performance Standard: The general principle against which a judgment can be made to determine whether a service or an administrative component has achieved a particular level of attainment.

Criterion: A specific dimension or aspect of a program performance standard which helps to define that standard and which is amenable to direct observation or measurement.

Indicator: The specific documentation which demonstrates whether a criterion (or an aspect of a criterion) is being met and thereby the extent to which a specific aspect of a standard is being met.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition, and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the regional ACYF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards (and the Program Performance Standards Self-Assessment Instrument) are designed to serve as a developmental tool, and are to be employed by both the project staff and the regional ACYF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

II. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach

The project shall conduct outreach efforts directed towards community agencies, youth and parents.

2. Individual Intake Process

The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment

from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling

The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. Individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program

The project shall provide a recreational-leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian, and the staff in determining what living arrangement constitute the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian, project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development

Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation

The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files

The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth shall, at a minimum, include an intake form which minimally contains the basic background information required by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian except to project staff, to the funding agency(ies) and its (their) contractor(s), and to a court involved in the

disposition of criminal charges against the youth.

13. Ongoing Center Planning

The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a) and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (Optional)

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under 13.

III. National Runaway Switchboard Project Description

The National Runaway Switchboard/National Communication System is a confidential telephone information, referral and counseling service to runaway and otherwise homeless youth and their families in the United States, including Alaska and Hawaii. It is also an invaluable technical resource to assist youth-serving agencies in delivering more effective services by facilitating communication among service providers about specific cases. In essence, the National Communications System is designed to provide a neutral and available channel of communication between runaway and homeless youth and their families and to refer runaway and otherwise homeless youth and their families to the appropriate agency for assistance with their immediate crisis as well as working toward resolving their problems. The National Runaway Switchboard (NRS) has become a major conduit for the reunification of runaway youth and their families. Also for the past year, the NRS has served as the National Youth Suicide Hotline, providing crisis intervention counseling and referral services to youth and their families.

The significant reasons for the development of the NRS are: (1) the interstate nature of the runaway and homeless youth problem, and (2) the increased vulnerability of youth to various forms of exploitation when they are away from home and/or in unfamiliar environments.

Approximately 2.26 million youth have been served by NRS from 1975 to the present. The current grant to operate NRS is held by Metro Help, Inc., 2210 N. Halsted, Chicago, Illinois 60614; Baulkus C. Heard, Executive Director; telephone: (312) 880–9860.

Appendix D—Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905.

Alaska

None.

Arizona

Department of Commerce, State of Arizona.

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Janice Dunn, Attn: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074.

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480.

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156.

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459.

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410.

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204.

Florida

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855.

Hawaii

Kent M. Keith, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804.

For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085.

Idaho

None.

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639.

Indiana

Mr. Alexander J. Ingram, Deputy Dirctor, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604.

Iowa

Office for Planning and Programming, Capitol Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281–3864.

Kansas

Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Room 152–E, State Capitol Building, Topeka, Kansas 66612, Tel. (913) 296–2436.

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382.

Louisiana

Mr. Ferguson Brew, Assistant Secretary and SPOC, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3725.

Maine

State Planning Office, Attn: Intergovernmental Review Process/Hal

Kimbal, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154.

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490.

Massachusetts

Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253.

Michigan

Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–3530.

Minnesota

Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Tel. (612) 296–2571.

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202.

For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150.

Missouri

Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 760 Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834.

Montana

Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522.

Nebraska

None.

Nevada

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420.

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155.

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613.

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025.

New Mexico

Peter C. Pence, Director, Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503, Tel. (505) 827–3885.

New York

Director of the Budget, New York State.

Note: Correspondence & questions concerning the State's E.O. 12372 process should be directed to: New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131.

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094.

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215.

For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699.

Oklahoma

Don Strain, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770.

Oregon

Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street N.E., Salem, Oregon 97310, Tel. (503) 373–1998.

Pennsylvania

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700.

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656.

Note: Questions & correspondence concerning this State's review process should be directed to: Mr. Michael T. Marfeo, Review Coordinator.

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734–0435.

South Dakota

Janie Beeman, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661.

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676.

Texas

Bob McPherson, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711.

Note: Questions concerning this State's review process should be directed to: Intergovernmental Relations Division, Tel. (512) 463–1778.

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245.

Vermont

State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326.

Virginia

Shawn McNamara, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786–4474.

Washington

Washington Department of Community Development, Attn: Washington Intergovernmental Review Process, Ninth and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 586–1240.

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010.

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster—GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741.

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–8349.

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574.

Virgin Islands

Toya Andrew, Federal Program Coordinator, Office of the Governor, The

Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–6517.

District of Columbia

Lovetta Davis, D.C. State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue N.W., Washington, D.C. 20004, Tel. (202) 727–6265.

Puerto Rico

Ms. Patricia G. Custodio, P.E., Chairman, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444.

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950.

American Samoa

None.

Guam

Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910.

Appendix E

Region I: Sue Rosen, Office of Human Development Services, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565–1144

Region II: Matt Schottenfeld, Office of Human Development Services, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264–2974

Region III: David Lett, Office of Human Development Services, 3535 Market Street, Post Office Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596–1224

Region IV: Viola Brown, Office of Human Development Services, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 221–2128

Region V: Katie Williams, Office of Human Development Services, 300 South Wacker Drive, Chicago, IL 60606 (IL, IN, MI, MN, OH, WI), (312) 886–5368

Region VI: Eddie Falcone, Office of Human Development Services, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767–6596

Region VII: Steve Nash, Office of Human Development Services, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (617) 758–5401

Region VIII: Juan Cordova, Office of Human Development Services, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3106

Region IX: Ray Myrick, Office of Human Development Services, 50 United Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 556–6178

Region X: Lee Koenig, Office of Human Development Services, 2901 Third Avenue, Mail Stop 503, Seattle, WA 98121 (AK, ID, OR, WA), (206) 442–0851

Appendix F

Region I: Nancy Jackson, Massachusetts Committee for Children and Youth, 14 Beacon Street, Suite 706, Boston, MA 02108, (617) 742–8555

Region II: Margo Hirsch, Empire State Coalition, 666 Broadway, 8th Floor, New York, NY 10012, (212) 674–2121

Region III: Paul G. Rosenfew, Mid-Atlantic Association for Runaway Youth, 300 Cathedral Street, Suite 100, Baltimore, MD 21201, (301) 539–1848

Region IV: Gail L. Kurtz, Southeastern Network of Runaway Youth, 337 South Milledge Ave., Suite 209, Athens, GA 30605, (404) 354–4568

Region V: Denis Murstein, Youth Network Council of Chicago, Inc., 506 South Wabash Avenue, Suite 520, Chicago, IL 60605, (312) 427–2710

Region VI: Theresa Andreas, Southwest Network of Youth Services, Inc., P.O. Box 6503, Austin TX 78762, (512) 478–6676

Region VII: Jack McClure, M.I.N.K.: A Network for Runaway and Homeless Youth, P.O. Box 14403, Parkview, MO 64152, (816) 741–5638

Region VIII: Linda Wood, Mountain Plains Youth Network, 1424 W. Century Ave., Suite 101, Bismarck, ND 58501, (701) 255–7229

Region IX: Nancy Sefcik, Western States Youth Services, 1722 J Street, Suite 11, Sacramento, CA 95814, (916) 447–7164

Region X: Ginger Baggett, Northwest Network of Runaway and Youth Services, 1307 W. Main Street, Suite 3, Medford, OR 97501, (503) 779–2393

Appendix G—Runaway and Homeless Youth Program FY 1987 Continuation (Multi-Year) Basic Center Grantees

REGION I

Connecticut

Council of Churches, 3030 Park Avenue, Bridgeport, CT 06604, John Cottrell, (203) 374–9471

The Youth Shelter, Inc., 105 Prospect Street, Greenwich, CT 06830, Shari Shapiro, (203) 661–2599

Waterbury YMCA/Youth Service Bureau, 136 West Main Street, Waterbury, CT 06702, Tom Donaldson, (203) 754–2181

Youth Continuum of TRI-RYC, 888 Winchester Avenue, New Haven, CT 06511, Paul Watson, (203) 562–3396

Quinebaug Valley Youth Services Bureau, P.O. Box 812, North Grosvenordale, CT 06255, Joel Cooper, (203) 923–9526

Maine

Youth and Family Services, P.O. Box 502, Skowhegan, ME 04976, Ron Hebert, (207) 474–8311

New Beginnings, 491 Main Street, Lewiston, ME 04240, Earle Simpson, (207) 946–7272

Little Brothers Association, 175 Lancaster Street, Portland, ME 04101, George Lopes, (207) 772–4651

Massachusetts

Newton-Wellesley-Weston-Needham, 1301 Centre, Newton, MA 02159, Lowell Haynes, (617) 244–4802

Wayside Community Programs, P.O. Box 271, Framingham, MA 01701, Eric Masi, (617) 872–5611

The Bridge, Inc., 147 Tremont at West Street, Boston, MA 02111, Sister Barbara Whelan, (617) 423–9575

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03105, Reed Carver, (603) 668–1920

Vermont

Washington County Youth Service Bureau, Box 627, Montpelier, VT 05602, Tom Howard, (802) 229–9151

REGION II

New Jersey

Tri-County Youth Services, 212 Slater Street, Paterson, NJ 07505, Gail Manning, (201) 881–0280

Anchor House, Inc., 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329

Together, Inc., 7 State Street, Glassboro, NJ 08028, Nikki Taylor, (609) 881–6100

Crossroads Programs, Inc., P.O. Box 98, Burlington, NJ 08016, Jeanne Stoops, (609) 261–5400

Starting Point, Box 1822, Atlantic City, NJ 08404, Donald Bitzer, (609) 347–1122

Youth Coordinating Council, 306 Brookline Avenue, Cherry Hill, NJ 08002, Eleanor Stofman, (609) 667–6525

Group Homes or Camden County, 35 South 29th Street, Camden, NJ 08105, Shirley Williams, (609) 541–9283

New York

Family of Woodstock, U.P.O. Box 3516, Kingston, NY 12401 Joan Mayer, (914) 679–9240

Equinox, Inc., 214 Lark Street, Albany, NY, Donna McIntosh, (518) 465–9524

Compass House, 370 Linwood Avenue, Buffalo, NY 14209, Janell Wilson, (716) 886–1351

Town of Huntington Youth Bureau, 423 Park Avenue, Huntington, NY 11743, Paul Lowery, (516) 351–3061

Center for Youth Services, 258 Alexander Street, Rochester, NY 14607, Roger Palma, (716) 473–2464

YWCA of Binghamton/Broome County, 80 Hawley Street, Binghamton, NY 13901, Penny Smith, (607) 772–0340

Westchester Children's Association, 470 Mamaroneck Avenue, White Plains, NY 10605, Eileen Moran, (914) 946–7676

Under 21, 460 West 41st Street, New York, NY 10036, Eleanor Miller, (212) 354–4323

Society for Seamen's Children, 26 Bay Street, Staten Island, NY 10301, Ann Deinhardt, (718) 447–7740

Flowers With Care, 23–40 Astoria Boulevard, Astoria, NY 11102, Rev. James Harvey, (718) 726–9790

Dutchess County, 22 Market Street, Poughkeepsie, NY 12601, Victoria Best, (914) 431–2021

County of Nassau Youth Board, 1 West Street, Mineola, NY 11501, Ann Irvin, (516) 535–5893

Puerto Rico

Department of Social Services, Box 11398, Santurce, PR 00910, Efrain Ayala, (809) 722–7400

REGION III

Delaware

Child, Inc., 11th and Washington Streets, Wilmington, DE 19801, Joseph Dell'Olio, (302) 655–3311

Aid in Dover, Inc., 313 South State Street, Dover, DE 19901, Beverly Williams, (302) 734–7610

Maryland

Youth Resources Center, Inc., 6201 Belcrest Road, Hyattsville, MD 20782, Kris Mayne, (301) 779–1257

Fellowship of Lights, Inc., 1300 North Calvert Street, Baltimore, MD 21202, Ross Pologe, (301) 837–8155

Boys & Girls Home of Montgomery County, 9601 Colesville Road, Silver Spring MD, Quanah Parker, (301) 589–8444

Southern Area Youth Services, P.O. Box 44408, Friendly, MD 20744, Thomas Merrick, (301) 292–3825

Pennsylvania

Valley Youth House Committee, 539 Eighth Avenue, Bethlehem, PA 33601, David Gilgoff, (215) 691–1200

Voyage House, Inc., 1431 Lombard Street, Philadelphia, PA 19146, Francis Stoffa, (215) 545–2910

Centre County Youth Service, 205 East Beaver Avenue, State College, PA 16801, Norma Keller, (814) 237–5731

Catholic Social Services, P.O. Box 3551, Harrisburg, PA, Very Rev. Francis Kumontis, (717) 652–3934

Whale's Tale, 5100 Centre Avenue, Pittsburgh, PA 15232, Christopher Smith, (412) 621–8407

Catholic Social Services, 15 South Franklin Street, Wilkes-Barre, PA 18702, Thomas Cherry, (717) 824–5766

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212, Ruth Richardson, (412) 766–2215

Alternatives Corporation, 360 King Street, Pottstown, PA 19464, Ronald Harris, (215) 327–1601

Virginia

Juvenile Assistance, McLean Ltd., (Alternative House), P.O. Box 637, McLean, VA 22101, Robb Hasencamp, (703) 356–8355

Alexandria Community Y, 418 South Washington Street, Alexandria, VA 22314, Craig Hutton, (703) 549–1111

Family and Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard Lung, (804) 282–4255

Volunteer Emergency Foster Care, 2317 Westwood Avenue, Suite 109, Richmond, VA 23230, William Christian, (804) 353–4698

West Virginia

Daymark, Inc., 1583 Lee Street, East, Charleston, WV 25311, Amy Buckingham, (304) 344–3527

Southwest Community Council, 540 Fifth Street, Huntington, WV 25701, Joan Ross, (304) 525–5151

District of Columbia

Sasha Bruce Youthwork, Inc., 1022 Maryland Avenue NE., Washington, DC 20002, Deborah Shore, (202) 546–6807

REGION IV

Alabama

American Red Cross, 405 South First Street, Gadsden, AL 35901, Windell Jolley, (205) 547–9505

Mobile Mental Health Center, 2400 Gordon Smith Drive, Mobile, AL 36617, Edmund Lakeman, (205) 473–4423

Shelby Youth Services, P.O. Box 1261, Alabaster, AL 35007, Brenda Lee-Rice, (205) 663–6301

Progress Place Foundation, 3100 Ivy Avenue, Huntsville, AL 35805, Karen Hughes, (205) 539–0130

Florida

Youth Crisis Center, Inc., P.O. Box 16567, Jacksonville, FL 32245, Tom Patania, (904) 725–6662

Alternative Human Services, P.O. Box 13087, St. Petersburg, FL 33733, Roger McDonald, (813) 526–1123

Corner Drugstore, 1300 NW 6th Street, Gainesville, FL 32601, Karen Leathers, (904) 377–2976

Youth and Family Alternatives, P.O. Box 1073, New Port Richey, FL 34291, Richard Hess, (813) 842–8060

Someplace Else, 2001 Apalachee Parkway, Tallahassee, FL 32301, Diane Alexander, (904) 877–7993

Hillsborough County Board, P.O. Box 1110, Tampa, FL 33601, Leon Polhill, (813) 961–1242

Switchboard of Miami, 35 S.W. 8th Street, Miami, FL 33130, Shirley E. Aron, (305) 358–1640

Miami Bridge, 1145 N.W. 11th Street, Miami, FL 33136, Richard Moran, (305) 324–8953

Orange County Board of Commissioners, 1718 East Michigan Avenue, Orlando, FL 32806, Larry A. Jones, (305) 420–3620

Georgia

Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601, Martha Mendenhall, (404) 548–5893

The Bridge, 77 Peachtree Place N.W., Atlanta, GA 30309, Kenneth Saunders, (404) 881–8344

The Marshlands Foundation, 11 West Park Avenue, Savannah, GA 30401, Pat Peshoff, (912) 234–4048

Kentucky

Brighton Center, P.O. Box 325, Newport, KY 41072, Kim Brooks, (606) 581–1111

YMCA of Greater Louisville, 1410 South First Street, Louisville, KY 40208, Larry Wooldridge, (502) 637–6480

MASH (Metropolitan Alternatives Shelter House), 536 West Third Street, Lexington, KY 40508, Kathy Noel, (606) 254–2501

North Carolina

The Relatives, Inc., 1000 East Boulevard, Charlotte, NC 28203, Jo Ann Greyer, (704) 377–0602

Haven House, 401 E. Whitaker Mill Road, Raleigh, NC 27608, Michael Rieder, (919) 755–6368

Mountain Youth Resources, Inc., P.O. Box 2847, Cullowhee, NC 28723, Elizabeth Chambers, (704) 586–8958

Tennessee

Oasis House, P.O. Box 121648, Nashville, TN 37212, Della Hughes, (615) 329–8036

REGION V

Illinois

Maryville Academy, 1150 North River Road, Des Plaines, IL, Rev. John Smyth, (312) 824–6126

Children's Home and Aid Society, 307 West University Avenue, Champaign, IL 61820, Sharon Pierce, (217) 359–8815

McHenry County Youth Service, 14124 South Street, Woodstock, IL 60098, Tom Engle, (815) 338–7360

Hoyleton Children's Home, 36 Loisel Village, East St. Louis, IL 62203, Lucky Hollander, (618) 398–0900

Youth Network Council, 506 South Wabash Avenue, Chicago, IL 60605, Deborah Davenport, (312) 226–1000

Central Illinois Youth Service Bureau, 832 South Fourth Street, Springfield, IL 62703, Kaywin David, (217) 753–8300

Aunt Martha's, 221 Plaza, Park Forest, IL 60466, Kathleen Miner, (312) 747–2701

Home Sweet Home Mission, 300 Mission Drive, Bloomington, IL 61701, Darryl Eslinger, (309) 828–7356

Boys' Clubs of America, 307 Walnut Street, Rockford, IL 61108, Lou Tangorra, (815) 964–0834

LaSalle County Youth, 827 Columbus Street, Ottawa, IL 61350, Dave McClure, (815) 433–3953

Indiana

Monroe County Youth Service Bureau, 1310 East Atwater Avenue, Bloomington, IN 47401, Roberta Wysong, (812) 333–3506

Crisis Center, Inc., 215 N. Grand Boulevard, Gary, IN 46403, Shirley Caylor, (219) 980–4207

Indiana Juvenile Justice Task Force, 3050 North Meridian, Indianapolis, IN 46208, Ron Carpenter, (317) 926–6100

Michigan

The Sanctuary, 1222 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260

Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Polly Learned, (616) 983–6351

Equal Ground, 415 Park Lane, East Lansing, MI 48823, James Gorman, (517) 351–4000

Comprehensive Youth Services, Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Schietaert, (313) 463–7079

Minnesota

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405, Thomas Sawyer, (612) 377–8800

St. Paul Youth Service Bureau, 421 West University Avenue, St. Paul, MN 55103, Raeone Buckman-Ellis, (612) 292–7191

Ohio

Connecting Point, Inc., 3301 Collingwood Boulevard, Toledo, OH 43610, Bonnie Kauffmann, (419) 243–6326
Huckleberry House, Inc., 1421 Hamlet Street, Columbus, OH 43201, Douglas McCoard, (614) 294–8097
New Life Youth Services, P.O. Box 27035, Cincinnati, OH 45227, Robert Mecum, (513) 561–0100
Free Medical Clinic, 12321 Euclid Avenue, Cleveland, OH 44106, Rebecca Devenazio, (216) 421–2000
Safe Landing Youth Shelter, 680 E. Market Street, Akron, OH 44304, David Faijr, (216) 376–4200
Daybreak, Inc., 819 Wayne Avenue, Dayton, OH 45410, Cathy Castillo, (513) 461–1000
Black Focus on the West Side, 4115 Bridge Avenue, Cleveland, OH 44113, Willie Griffin, (216) 631–7660
Clermont County Community Services, 2291 Bauer Road, Batavia, OH 45103, John Childress, (513) 732–7182

Wisconsin

Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Steve Sperling, (608) 251–1126
Counseling Center of Milwaukee, 1428 North Farwell Avenue, Milwaukee, WI 53202, David Cobb, (414) 271–2565
Walker's Point Youth Center, 732 South 21st Street, Milwaukee, WI 53204, Richard Ward, (414) 647–8200
Innovative Youth Services, 1030 Washington Avenue, Racine, WI 53403, Andre Olton, (414) 637–9557
Wisconsin Association for Runaway Services, 2318 E. Dayton Street, Madison, WI 53704, Patricia Balke, (608) 241–2649

REGION VI

Arkansas

Stepping Stone, Inc., 3500 S. University, Little Rock, AR 72204, Judy Kane, (501) 562–1809
Youth Bridge, Inc., P.O. Box 668, Fayetteville, AR 72702, Michael Lee, (501) 632–4618
Comprehensive Juvenile Services, 51 South Sixth, Fort Smith, AR 72901, Jerry Robertson, (501) 785–4031

Louisiana

Youth Alternatives, Inc., 700 Frenchmen Street, New Orleans, LA 70116, Linda Irwin, (504) 949–9248

New Mexico

New Day, Inc., 1816 Sigma Chi N.E., Albuquerque, NM 87106, Jeff Burrows, (505) 247–9559

Oklahoma

Northwest Family Services, 326 Seventh Street, Alva, OK 73717, John Jones, (405) 327–2900
Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534, John Herdt, (405) 255–8800
Cherokee Nation Youth Shelter, P.O. Box 948, Tahlequah, OK, Gwen Grayson, (918) 456–0671
Kay County Youth Services, 415 W. Grand, Ponca City, OK 74601, Marcus Whitt, (405) 762–8341
Youth Services of Tulsa County, 1415 E. 8th Street, Tulsa, OK 74120, Janis Walker, (918) 582–0061
Youth and Family Services, 2404 Sunset Drive, El Reno, OK 73036, Warren Wells, (405) 262–6555

Texas

Youth Alternatives, Inc.—The Bridge, 3103 West Avenue, San Antonio, TX 78213, Roy Maas, (512) 340–8077
Catholic Family Services, Inc., P.O. Box 15127, Amarillo, TX 79105, Katie McDonough, (806) 376–45771
Houston Metropolitan Ministries, 2001 Huldy, Houston, TX 77006, Theodore Shorten, (713) 527–8218
Comal County Treatment Center, 1414 W. San Antonio Street, New Braunfels, TX 78130, Nancy Ney, (512) 629–4329
Tropical Texas Center, P.O. Drawer 1108, Edinburg, TX 78539, Jay Velarde, (512) 383–0121
Harris County Children's Services, 6425 Chimney Rock Road, Houston, TX 77081, Ann Hibbert, (713) 526–5701
The Bridge Association, 115 W. Broadway, Fort Worth, TX 76104, Gary Metcalf, (817) 926–9184
Middle Earth Unlimited, Inc., P.O. Box 6503, Austin, TX 78762, Mitch Weynand, (512) 482–8322
Lovers Lane, 9200 Inwood Road, Dallas, TX 75220, Martha Stowe, (214) 691–4721
Carrollton Youth Advocacy Council, 3945 North Josey Lane, Carrollton, TX 75007, Mary Fulbright, (817) 273–2084
Sabine Valley Mental Health, P.O. Box 6800, Longview, TX 75608, Lenann Nye, (214) 297–2191
Youth Alternatives, Inc.—Stepping Stone, 3103 West Avenue, San Antonio, TX 78213, Roy Maas, (512) 340–8077
Sand Dollar, 2501½ McDuffie, Houston, TX 77019, John Miller, (713) 529–3053

REGION VII

Iowa

Christian Home Association, North 7th and Avenue E, Council Bluffs, IA 51502, Ruth Few, (712) 325–1910
Youth and Shelter Services, 217 Eighth Street, Ames, IA 50010, George Belitsos, (515) 233–3141

Kansas

Wyandotte House, 632 Tauromee, Kansas City, KS 66101, Wayne Sims, (913) 342–9332

Missouri

Youth in Need, 529 Jefferson, St. Charles, MO 63301, Liza Andrew-Miller, (314) 724–7171
Youth Emergency Service, 6816 Washington Avenue, University City, MO 63130, Linda James, (314) 862–1334
The Front Door, 707 North Eighth Street, Columbia, MO 65201, Nancy Howard, (314) 874–8686
Asylum of St. Louis—Marian Hall, 325 N. Newstead, St. Louis, MO 63108, Patricia Bednara, (314) 531–0511

Nebraska

Youth Service System, 2202 South 11th Street, Lincoln, NE 68502, Mary Fran Flood, (402) 475–3040

REGION VIII

Colorado

Attention, Inc., P.O. Box 907, Boulder, CO 80306, Rita Vance, (303) 447–1206
Young Life (Dale House), 821 N. Cascade Avenue, Colorado Spring, CO 80903, George Sheffer, (303) 471–0642
Comitis Crisis Center, 9840 E. 17th Street, Aurora, CO 80010, R. E. Barnhill, (303) 341–9160
Denver Alternative Youth Services, 1240 W. Bayaud Avenue, Denver, CO 80223, Sam Martinez, (303) 698–2300
Let's Work It Out, 902 Taughenbaugh, Rifle, CO 81650, Patti Phelps, (303) 625–3141
Gemini Shelter (Family Tree), 3805 Marshall Street, Wheat Ridge, CO 80033, Gail Penney, (303) 235–0630
Larimer County Shelter Care, 4432 Poco Drive, Fort Collins, CO 80525, Eri Busch, (303) 226–6984

Montana

Mountain Plains Youth Service, 709 East Third, Anaconda, MT 59711, Linda Wood, (701) 255–7229
Blackfeet Tribal Council, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338–5871

North Dakota

Mountain Plains Youth Service, 1424 W. Century Avenue, Bismarck, ND 58501, Linda Wood, (701) 255–7229

South Dakota

Mountain Plains Youth Service, 1206 N. Third Street, Aberdeen, SD 57401, Linda Wood, (701) 255–7229

Wyoming

Mountain Plains Youth Service, 20 W. Works, Sheridan, WY 82801, Linda Wood, (701) 255–7229
Attention Home, Inc., 1810 Van Lennen Avenue, Cheyenne, WY 82001, Tricia Crilly, (307) 832–4740

REGION IX

Arizona

Open-Inn, Inc., 3844 E. Fifth Street, Tucson AZ 85716, Darlene Dankowski, (602) 323–0200
Yuma County Child Abuse and Neglect, 257 South Third Avenue, Yuma, AZ 85364, Charlene Hicks, (602) 783–2427
Center for Youth Resources, 915 N. Fifth Street, Phoenix, AZ 85004, Michael Garvey, (602) 271–9849

California

Diogenes Youth Services, 1722 J Street, Suite 11, Sacramento, CA 95814, Lynette Towers, (916) 443–6115
Travelers Aid Society, 646 S. Los Angeles Street, Los Angeles, CA 90014, Robert Butler, (213) 625–2501
Interface Community, Inc., 3465 Old Conejo Road, Newbury Park, CA 91320, Kate McLean, (805) 498–6643; 529–0975
San Diego Youth and Community Services, 1214—28th Street, San Diego, CA 92102, Liz Shear, (619) 280–4034

Sequoia YMCA, 1445 Hudson Street, Redwood City, CA 94061, Richard Gordon, (415) 366–8408

Youth Advocates (Huckleberry House), 285—12th Avenue, San Francisco, CA 94118, Randall Mecham, (415) 668–2622

Ocean Park/Stepping Stone, 1833—18th Street, Santa Monica, CA 90404, Amy Somers, (213) 450–3881

YMCA of San Diego County, 7510 Clairement Mesa Blvd., San Diego, CA 92111, Beverly Digregorio, (619) 292–4034

Youth Advocates (Nine Grove Lane), 285—12th Avenue, San Francisco, CA 94118, Randall Mecham, (415) 668–2622

Bill Wilson Counseling Center, 1000 Market Street, Santa Clara, CA 93101, Sparky Harlan, (408) 984–5955

Western Youth Services (Odyssey), 204 E. Amerige Avenue, Fullerton, CA 92632, Jeff Harris, (714) 871–5646

Tahoe Human Services, Inc., P.O. Box 848, South Lake Tahoe, CA 95705, David Hampton, (916) 541–2445

Klein Bottle, 1235–B Veronica Springs Road, Santa Clara, CA 93105, David Edelman, (805) 682–3850

South Bay Community Services, 406 Third Avenue, Chkula Vista, CA 92010, Kathryn Schroeder, (619) 420–3620

1736 Family Crisis Center, 1736 Monterey Boulevard, Hermosa Beach, CA 90254, Carol Adelkoff, (213) 372–5843

Butte County Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926, Alex Collins-Thomas, (916) 534–4211

San Diego Youth Involvement, 626 South 28th Street, San Diego, CA 92113, Sandra Sandoval, (619) 234–1871

Diogenes Youth Services (Yolo), 1722 J Street, Suite 11, Sacramento, CA 95814, Lynette Towers, (916) 443–6115

C.S.P. South County Youth Shelter, 980 Catalina, Laguna Beach, CA 92651, Barbara Dykes, (714) 494–4311

Casa de Bienvenidos, P.O. Box 216, Los Alamitos, CA 90720, Darwin Wagner, (213) 594–6825

Redwood Community Action Agency, 904 G Street, Eureka, CA 95501, Lloyd Throne, (707) 443–8322

Santa Cruz Counseling Service, 716 Ocean Street, Santa Cruz, CA 95062, Mary Sims, (408) 425–1830

Santa Clara County Social Advocate, 509 View Street, Mountain View, CA 94041, Paul Schultz, (408) 235–3540

Mendocino County Schools, 518 Low Gap Road, Ukiah, CA 95482, Jim Levine, (707) 463–4915

Individuals Now, Inc., 1303 College Avenue, Santa Rosa, CA 95404, Adam Jacobs, (707) 544–3299

Hawaii

Hawaii Youth Shelter Network, 2146 Damon Street, Honolulu, HI 96822, Sam Cox, (808) 946–3635

REGION X

Alaska

Alaska Youth and Parent Foundation, 135 North Park, Anchorage, AK 99508, Sheila Gaddis, (907) 274–6541

Idaho

Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234–2244

Oregon

The Youthworks, Inc., 1307 W. Main Street, Medford, OR 97501, Craig A. Christiansen, (503) 779–2393

Looking Glass, 1177 Pearl Street, Eugene, OR 97401, Galen Phipps, (503) 689–3111

Janis Youth Programs, Inc., 738 N.E. Davis, Portland, OR 97232, Dennis Morrow, (503) 233–6090

Washington

Spokane Tribe of Indians, P.O. Box 100, Wellpinit, WA 99040, Lynne Walks-on-Top, (509) 258–4581

Youth and Community Services, 1545—12th Avenue, South, Seattle, WA 98144, Victoria Wagner, (206) 322–7927

Northwest Youth Services, P.O. Box 1449, Bellingham, WA 98227, Mark Taylor, (206) 734–9862

Youth Help Association, West 1101 College, Spokane, WA 99201, Mary Ann Murphy, (509) 326–9553

Friends of Youth, 2500 Lake Washington Blvd., N., Renton, WA 98056, Howard Finck, (206) 228–5775

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federal register

Friday
March 20, 1987

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 7 et al.
Federal Aquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 8, 9, 13, 15, 22, 31, 32, 44, 52, and 53

[Federal Acquisition Circular 84-25]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84–25 amends the Federal Acquisition Regulation (FAR) with respect to the following: Revision to FAR 7.305(c); FAR Subpart 8.8, Acquisition of Printing and Related Supplies; Exclusion of Debarred and Suspended Agents and Representatives; Blanket Purchase Agreements; Training and Education Costs; Relocation Cost Principle; Administration of Progress Payments to Subcontractors; DOD Contract Forms; Revision to FAR provision 52.215–17, Telegraphic Proposals; and Editorial Corrections.

EFFECTIVE DATE: July 1, 1987.

ADDRESS: Interested parties should submit written comments to: GSA, Attn: FAR Secretariat, 18th & F Streets, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Public Comments

FAC 84–25, Items I, II, IV, VII, VIII, IX and X. Public comments have not been solicited with respect to these revisions since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

FAC 84–25, Item III. A notice of proposed rule was published in the **Federal Register** on October 28, 1985 (50 FR 43633) requesting Government agencies, private firms, associations, and the general public to submit comments to be considered in the formulation of the final rule. All comments received, except four, concurred in the proposed coverage. Those four comments were considered and no change to the proposed coverage was deemed necessary.

FAC 84–25, Item V. The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have considered the public comments solicited in the **Federal Register** on November 1, 1985 (50 FR 45708). The Councils have concluded that amendments to the FAR are necessary to encourage closer ties between Government contractors and academia.

FAC 84–25, Item VI. The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have considered the public comments solicited in the **Federal Register** on November 26, 1985 (50 FR 48735). The Councils have concluded that several revisions to the cost principle are necessary on relocation costs (FAR 31.205–35) to eliminate some bases for possible misinterpretation.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

C. Regulatory Flexibility Act

FAC 84–25, Items I, II, IV, VII, VIII, IX and X. Analyses of these revisions indicate that they are not "significant revisions" as defined in FAR 1.501–1; i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98–525 and section 302 of Pub. L. 98–577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply.

FAC 84–25, Item III. The revision to FAR 9.405 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the number of small entities that act as representatives or agents of a contractor are minimal. In addition, no public comments were received to indicate that there will be a significant economic impact on a substantial number of small entities.

FAC 84–25, Item V. These revisions will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because advance agreements are usually negotiated on contracts where there is a requirement for future negotiation in the settlement of the contract price, and as a general rule, these types of contracts apply to large businesses. In addition, there were no public comments received that indicated there was a significant impact on small entities.

FAC 84–25, Item VI. The revision to FAR 31.205–35 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because—

(i) It clarifies the language governing the allowability of contractor-incurred relocation costs;

(ii) It will not impose any additional recordkeeping requirements; and

(iii) It will not cause additional costs in order to comply.

List of Subjects in 48 CFR Parts 7, 8, 9, 13, 15, 22, 31, 32, 44, 52, and 53

Government procurement.

Dated: March 16, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–25 is effective July 1, 1987.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator.

March 16, 1987.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–25 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Revision to FAR 7.305(c)

FAR 7.305 is revised to clarify the requirement that the clause at 52.207–3, Right of First Refusal of Employment, is to be included in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in all contracts that result from the solicitations whether or not a cost comparison is performed.

Item II—FAR Subpart 8.8, Acquisition of Printing and Related Supplies

FAR 8.800 through 8.802 were written, in part, to implement the requirement of 44 U.S.C. 501(2) that exective departments obtain approval of the Joint Committee on Printing (JCP) before conducting field printing operations. By memorandum dated March 2, 1984, the

Assistant Attorney General concluded ". . . that JCP approval requirement set forth in 44 U.S.C. 501(2) purports to authorize a committee of Congress to take legislative actions; such purported authorization is unconstitutional under the Supreme Court's decision in *Chadha*." See *Immigration & Naturalization Service v. Chadha*, 103 S. Ct. 2764 (1983). The memorandum went on to discuss the advisability of a notification requirement, in lieu of an approval procedure. This revised coverage reflects the deletion of the approval procedure, substitution of a notification requirement, and revision of definitions to reflect the statute rather than JCP regulations.

Item III—Exclusion of Debarred and Suspended Agents and Representatives

FAR 9.405 is revised to exclude contractors and individuals suspended or debarred from acting as agents or representatives of other contractors.

Item IV—Blanket Purchase Agreements

FAR 13.203 is revised to clarify that Blanket Purchase Agreements (BPA's) shall not cite accounting and appropriation data. This revision is intended to clearly indicate that BPA's cannot be funded.

Item V—Training and Education Costs

FAR 31.109 is revised to highlight training and education costs as an example of costs for which advance agreements may be particularly important. FAR 31.205–44 is revised to clarify the allowability of training materials and textbook costs and increase the one-year full-time education limitation to two years.

Additionally, the revised FAR 31.205–44 coverage provides that an advance agreement may be negotiated to allow costs, including subsistence, salaries, or other emoluments, in excess of those otherwise allowable for part-time college level education and full-time education. Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such education for reasons within an employee's control.

Item VI—Relocation Cost Principle

FAR 31.205–35 is revised to eliminate some bases for possible misinterpretation. Language defining the time requirement for permanent change of duty assignment is being refined to make it clear that it must be for 12 months or more to qualify for coverage under the relocation cost principle. The sentence in FAR 31.205–35(a) that qualifies the list of allowable relocation costs by making reference to subsequent paragraphs is being corrected to include all paragraphs that do in fact qualify the allowability of those costs. Finally, a new paragraph (f) clarifies the allowability of the relocation costs of employees who are hired, relocated, and returned to their domiciles in connection with specific contracts or long-term field projects.

Item VII—Administration of Progress Payments to Subcontractors

FAR 32.504 and 44.303 are revised to clarify contracting officers' responsibilities for reviewing prime contractor administration of progress payments to subcontractors. Contract administration offices are expected to review the contractor's management system, including internal audit procedures, in their continuous surveillance programs.

Item VIII—DOD Contract Forms

FAR 52.214–1, 52.214–2, 52.215–5, and 52.215–6 are revised to eliminate the need for separate provisions in overseas solicitations.

Item IX—Revision to FAR Provision 52.215–17, Telegraphic Proposals

FAR 52.215–17, Telegraphic Proposals, is revised to clarify the requirement that telegraphic proposals must be submitted to the office specified in the solicitation.

Item X—Editorial Corrections

FAR 9.105–1 and 15.704 are revised to correct errors in FAC 54–18. FAR 32.805 is revised to reflect the recodification of Title 31 of the U.S. Code.

Therefore, 48 CFR Parts 7, 8, 9, 13, 15, 22, 31, 32, 44, 52, and 53 are amended as set forth below.

The interim rule (FAC 84–14) amending Parts 22 and 53 and sections 52.222–4 and 52.222–5, which was published on April 9, 1986 (51 FR 12292), is hereby adopted as a final rule without change.

1. The authority citation for 48 CFR Parts 7, 8, 9, 13, 15, 22, 31, 32, 44, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.305 is amended by revising paragraph (c) to read as follows:

7.305 Solicitation provisions and contract clause.

* * * * *

(c) The contracting officer shall insert the clause at 52.207–3, Right of First Refusal of Employment, in all solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost comparison is conducted.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Section 8.800 is revised to read as follows:

8.800 Scope of subpart.

This subpart provides policy for the acquisition of Government printing and related supplies.

4. Section 8.801 is amended by revising the definition "Government printing" to read as follows:

8.801 Definitions.

"Government printing" means printing, binding, and blankbook work for the use of an executive department, independent agency, or establishment of the Government.

* * * * *

5. Section 8.802 is amended by revising paragraph (a); by revising and redesignating paragraph (b) as (d); by adding new paragraphs (b) and (c); and redesignating the existing text of (c) as paragraph (e) to read as follows:

8.802 Policy.

(a) The Department of Justice has advised that the requirement in 44 U.S.C. 501(2) for the advance approval of the Congressional Joint Committee on Printing (JCP) prior to conducting field printing operations (or the acquisition of such printing) is unconstitutional under the Supreme Court's decision in *Immigration and Naturalization Service* v. *Chadha*, 103 S. Ct. 2764 (1983); therefore, that approval requirement neither binds the executive branch nor serves as the basis for any coverage in this subpart.

(b) Government printing must be done by or through the Government Printing Office (GPO) (44 U.S.C. 501), unless—

(1) The GPO cannot provide the printing service (44 U.S.C. 504);

(2) The printing is done in field printing plants operated by an executive agency (44 U.S.C. 501(2));

(3) The printing is acquired by an executive agency from allotments for contract field printing (44 U.S.C. 501(2)); or

(4) The printing is specifically authorized by statute to be done other than by the GPO.

(c) Each executive agency shall report to the JCP its intention to conduct field printing operations or to acquire printing

at least 30 days prior to such action, except when unusual circumstances necessitate a shorter period.

(d) The head of each agency shall designate a central printing authority; that central printing authority may serve as the liaison with the JCP and the Public Printer on matters related to printing. Contracting officers shall obtain approval from their designated central printing authority before contracting in any manner, whether directly or through contracts for other supplies or services, for the items defined in 8.801 and for composition, platemaking, presswork, binding, and micrographics (when used as a substitute for printing).

* * * * *

PART 9—CONTRACTOR QUALIFICATION

6. Section 9.105–1 is amended by adding paragraph (d) to read as follows:

9.105–1 Obtaining information.

* * * * *

(d) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

7. Section 9.405 is amended by adding in paragraph (a) a second sentence to read as follows:

9.405 Effect of listing.

(a) * * * Debarred or suspended contractors are also excluded from conducting business with the Government as agents or representatives of other contractors.

* * * * *

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

8. Section 13.203–1 is amended by revising paragraphs (b) and (c) to read as follows:

13.203–1 General.

* * * * *

(b) A BPA should be established without a purchase requisition.

(c) A BPA shall not cite accounting and appropriation data (but see 13.204(e)(4)).

PART 15—CONTRACTING BY NEGOTIATION

15.704 [Amended]

9. Section 15.704 is amended by inserting in the last sentence the word "amount" following the word "dollar".

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

10. Section 31.109 is amended by removing in paragraph (h)(15) the word "and" after the semicolon; by removing in paragraph (h)(16) the period at the end of the sentence and inserting in its place a semicolon and the word "and"; and by adding paragraph (h)(17) to read as follows:

31.109 Advance agreements.

* * * * *

(h) * * *

(17) Training and education costs (see 31.205–44(h)).

11. Section 31.205–35 is amended by revising paragraph (a) and by adding paragraph (f) to read as follows:

31.205–35 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty of assignment (for an indefinite or stated period, but in either event for not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to paragraphs (b) through (f) below:

* * * * *

(f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if—

(1) The term of employment is not less than 12 months;

(2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;

(3) The employment agreement provides for return relocation to the employee's permanent and principal home immediately prior to the outgoing relocation, or other location of equal or lesser cost; and

(4) The relocation costs are determined under the rules of paragraphs (a) through (d) above. However, the costs to return employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of paragraph (d).

12. Section 31.205–44 is amended by revising the section title; by revising paragraphs (a), (b), (d), (e), (f), (h), and (j); by redesignating the existing paragraph (c)(3) as paragraph (c)(4); by removing in paragraph (c)(2) the word "and" after the semicolon; and by adding new paragraph (c)(3) to read as follows:

31.205–44 Training and education costs.

(a) *Allowable costs.* Training and education costs are allowable to the extent indicated below.

(b) *Vocational training.* Costs of preparing and maintaining a noncollege level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, are allowable. These costs include (1) salaries or wages of trainees (excluding overtime compensation), (2) salaries of the director of training and staff when the training program is conducted by the contractor, (3) tuition and fees when the training is in an institution not operated by the contractor, and/or (4) training materials and textbooks.

(c) * * *

(3) Training materials and textbooks; and

* * * * *

(d) *Full-time education.* Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.

(e) *Specialized programs.* Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) of this subsection.

(f) *Other expenses.* Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with 31.205–17, 31.205–24, and 31.205–36.

* * * * *

(h) *Advance agreements.*

(1) Training and education costs in excess of those otherwise allowable under (c) and (d) of this subsection,

including subsistence, salaries, or any other emoluments, may be allowed to the extend set forth in an advance agreement negotiated under 31.109. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the contracting officer shall give consideration to such factors as—

(i) The length of employees' service with the contractor;

(ii) Employees' past performance and potential;

(iii) Whether employees are in formal development programs; and

(iv) The total number of participating employees.

(2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign with 12 months of completion of such training or education for reasons within an employee's control.

* * * * *

(j) *Employee dependent education plans.* Costs of college plans for employee dependents are unallowable.

PART 32—CONTRACT FINANCING

13. Section 32.504 is amended by adding in paragraph (d) a final sentence to read as follows:

32.504 Subcontracts.

* * * * *

(d) * * * However, the contracting officer shall ensure that the contractor has installed the necessary management control systems, including internal audit procedures.

* * * * *

32.805 [Amended]

14. Section 32.805 is amended by removing in paragraph (c) the reference "31 U.S.C. 3737" and inserting in its place the reference "31 U.S.C. 3727, 41 U.S.C. 15."

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

15. Section 44.303 is amended by removing in paragraph (g) the word "and" after the semicolon; by removing in paragraph (h) the period and inserting in its place a semicolon and the word "and"; and by adding paragraph (i) to read as follows:

44.303 Extent of review.

* * * * *

(i) Management control systems, including internal audit procedures, to administer progress payments to subcontractors.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.103 [Amended]

16. Section 52.103 is amended by removing in paragraph (d)(1) the words "(Formal Advertising)" and inserting in their place the words "(Sealed Bidding)".

52.207-3 [Amended]

17. Section 52.207-3 is amended by inserting a colon in the introductory text after the word "clause" and removing the remainder of the sentence.

52.210-1 [Amended]

18. Section 52.210-1(a) is amended by removing second Region 7; by removing in Region 8 the telephone number "234-2216" and inserting in its place the telephone number "236-7409"; by removing in Region 9 the telephone number "688-3210" and inserting in its place the telephone number "894-3210"; by removing in National Capital Region the words "GSA Business Service Center" and inserting in their place "GSA Specifications Unit"; and by removing the telephone number "1004" and inserting in its place the telephone numbers "2205/2140".

19. Section 52.214-1 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(JUL 1987)" and by adding the definition "Government" to read as follows:

52.214-1 Solicitation Definitions—Sealed Bidding.

* * * * *

"Government" means United States Government.

* * * * *

20. Section 52.214-2 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(JUL 1987)" and by revising the provision to read as follows:

52.214-2 Type of Business Organization—Sealed Bidding.

* * * * *

The bidder, by checking the applicable box, represents that—

(a) It operates as / / a corporation incorporated under the laws of the State of _____, / / an individual, / / a partnership, / / a nonprofit organization, or / / a joint venture; or

(b) If the bidder is a foreign entity, it operates as / / an individual, / / a partnership, / / a nonprofit organization, / / a nonprofit organization, / / a joint venture, or / / a corporation, registered for business in country.

21. Section 52.215-5 is amended by revising the introductory text; by removing in the title of the provision the date "(APR 1984)" and inserting in its place the date "(JUL 1987)"; by adding the definition "Government" at the end of the provision; and by removing the derivation line following "(End of provision)" to read as follows:

52.215-5 Solicitation Definitions.

As prescribed in 15.407(c)(1), insert the following provision:

* * * * *

"Government" means United States Government.

* * * * *

22. Section 52.215-6 is amended by inserting a colon in the introductory text following the word "provision" and removing the remainder of the sentence; by removing in the title of the provision the date "(APR 1984)" and inserting in its place the date "(JUL 1987)"; by revising the provision; and by removing the derivation lines following "(End of provision)" to read as follows:

52.215-6 Type of Business Organization.

* * * * *

The offeror or quoter, by checking the applicable box, represents that—

(a) It operates as / / a corporation incorporated under the laws of the State of _____, / / an individual, / / a partnership, / / a nonprofit organization, or / / a joint venture; or

(b) If the offeror or quoter is a foreign entity, it operates as / / an individual, / / a partnership, / / a nonprofit organization, / / a joint venture, or / / a corporation, registered for business in _____ (country).

* * * * *

23. Section 52.215-17 is amended by inserting a colon in the introductory text after the word "proposals" and removing the remainder of the sentence; by removing in the title of the provision the date "(APR 1984)" and inserting in its place the date "(JUL 1987)"; by revising paragraph (a) of the provision; and by removing the derivation lines following "(End of provision)" to read as follows:

52.215-17 Telegraphic Proposals.

* * * * *

(a) Offerors or quoters may submit telegraphic responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

* * * * *

[FR Doc. 87-6002 Filed 3-19-87; 8:45 am]

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federal register

Friday
March 20, 1987

Part IV

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes simplified "type A" procedures for assessing damages to natural resources from a discharge of oil or release of a hazardous substance and compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, or under the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act). Responsibility for preparation of this rule was delegated by the President to the Department of the Interior in Executive Order 12316, August 14, 1981, 46 FR 42237.

This final rule is for the use of authorized Federal and State officials, referred to in CERCLA as "trustees" for natural resources, who decide to perform natural resource damage assessments and seek compensation for injuries to natural resources. This rule supplements the procedures for performing natural resource damage assessments published at 51 FR 27674 (August 1, 1986) and is applicable only to assessments of damages for injuries to natural resources in coastal and marine environments.

Section 301(c) of CERCLA requires the promulgation of two types of regulations: standard and simplified "type A" procedures, and alternative "type B" procedures to be used in individual cases. This rule consists of type A procedures. The type B procedures were contained in the rule published at 51 FR 27674. This final rule contains amendments to certain sections of the general assessment process found in the type B rule to allow for the incorporation of type A procedures into the natural resource damage assessment process.

The Superfund Amendments and Reauthorization Act of 1986 (SARA), enacted on October 17, 1986, amended certain sections of CERCLA that pertain to natural resource damages and to the damage assessment regulations. The Department is in the process of reviewing the SARA amendments and will propose any amendments to this final rule or to the final rule published at 51 FR 27674 in a future **Federal Register** notice.

Natural resource damage assessments are not the same as response or remedial actions addressed by the overall statutory scheme of CERCLA and the CWA. Assessments are not intended to replace response actions, which have as their primary purpose the protection of human health, but to supplement them by providing a process for determining proper compensation to the public for injury to natural resources.

DATE: The effective date of this final rule is April 20, 1987. The incorporation by reference of certain publications listed in this rule was approved by the Director of the Federal Register and is effective April 20, 1987.

ADDRESS: CERCLA 301 Project, Room 4354, Department of the Interior, 1801 "C" St. NW, Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger, (202) 343–1301; Willie Taylor, (202) 343–7531; or Alison Ling, (415) 556–8807.

SUPPLEMENTARY INFORMATION:

This rule was issued as a proposed rule on May 5, 1986 (51 FR 16636), with comments requested by June 19, 1986. The comment period was extended on June 19, 1986 (51 FR 22320), to July 3, 1986, and extended again on July 17, 1986 (51 FR 25903), to August 18, 1986.

Where appropriate in this preamble, language has been extracted, and in certain cases expanded, from the preamble of the proposed rule in order to ensure a clear understanding of the underlying principles contained in this final rule. This preamble has been expanded to include a detailed discussion of the technical aspects of this final rule and its application.

The contents of this preamble are listed in the following outline:

I. Background

A. Statutory Background

Section 301(c) of CERCLA requires the promulgation of rules for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and of section 311(f) (4) and (5) of the CWA. Section 301(c) of CERCLA states:

> (c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under Section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purpose of this Act and Section 311(f) (4) and (5) of the Federal Water Pollution Control Act.
>
> (2) Such regulations shall specify: (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.
>
> (3) Such regulations shall be reviewed and revised as appropriate every two years.

Section 301(c)(2) of CERCLA specifies two types of procedures to be developed. The type A procedures are to be standard procedures for simplified assessments requiring minimal field observation. The type B procedures are to include alternative methodologies for conducting assessments in individual cases.

This rule is for the use of authorized officials acting as trustees of natural resources to assess natural resource damages for purposes of Sections 107 (a) and (f) and 111 (a) and (d) of CERCLA and Section 311(f) (4) and (5) of the CWA. Use of this rule is at the discretion of the authorized official. The results of an assessment performed in accordance with 43 CFR Part 11 shall be accorded the evidentiary status of a rebuttable presumption as provided by CERCLA.

The Superfund Amendments and Reauthorization Act of 1986 (SARA), enacted on October 17, 1986, amended certain sections of CERCLA that pertain to natural resource damages and the damage assessment regulations. The Department is in the process of reviewing the SARA amendments and will propose any amendments to this final rule or to the final rule published at

51 FR 27674 in a future **Federal Register** notice.

B. Regulatory Background

On August 1, 1986 (51 FR 27674), the Department of the Interior published a final rule that provided a general process for conducting natural resource damage assessments. That final rule contained the alternative methodologies for conducting assessments in individual cases, otherwise known as the final "type B" procedures. The rationale set forth in that rule and explained in the preamble accompanying that rule is also applicable to this final rule, which is a more specific application of the concepts expressed in the type B rule. This rule comprises the "type A" procedures, or the standard procedures for simplified assessments requiring minimal field observation.

This final rule is being promulgated under a court-imposed deadline in a consent order entered in *State of New Jersey et al.* v. *Ruckelshaus et al.*, (now *Thomas*), Civ. No. 84–1668 (D.N.J.). The original deadline for promulgation and submission of the final type A rule for publication was August 7, 1986. This deadline was extended twice, once to October 7, 1986, and again to February 4, 1987. This change in deadlines resulted largely from numerous requests for an extension of time to provide public comment on the proposed type A rule and was not opposed by the parties to the litigation.

C. Judicial Review of the Type B Rule

Section 113 of CERCLA provides that any interested person may apply to the United States Court of Appeals for the District of Columbia Circuit for review of any regulation promulgated under Chapter I of the Act within ninety days from the date of promulgation of such regulations. Several parties have filed petitions for review of the final rule published at 51 FR 27674 (August 1, 1986) within the allowed time. The type B procedures contained in that rule are fully effective and may be used by trustees to assess damages for purposes of asserting natural resource damage claims under CERCLA or the CWA, unless and until the court rules that the rule or any part thereof is arbitrary and capricious or otherwise not in accordance with law.

II. Overview of the Rule

A. The Type A Assessment

Chart 1 provides a generalized overview of the entire natural resource damage assessment process. The purpose of this chart is to show the relationship of the type A assessment procedures to the overall natural resource damage assessment process. The general process for conducting natural resource damage assessments may be found at 51 FR 27674 (August 1, 1986). Certain sections of this final rule also amend sections of this general assessment process to allow incorporation of the type A procedures within that overall assessment process.

1. Preassessment Phase

All natural resource damage assessments contain the same initial steps. A natural resource damage assessment begins with the notification of the Federal or State agency acting as trustee as set forth in the National Contingency Plan (NCP) or with detection of a discharge or release by the Federal or State agency acting as trustee. Provisions are made for emergency restorations as authorized by Section 111(i) of CERCLA. The authorized official must perform a preassessment screen to determine that a CERCLA or CWA covered incident has occurred and that resources for which he may act as trustee may have been affected. A determination is required upon completion of the preassessment screen as to the appropriateness of further assessment actions.

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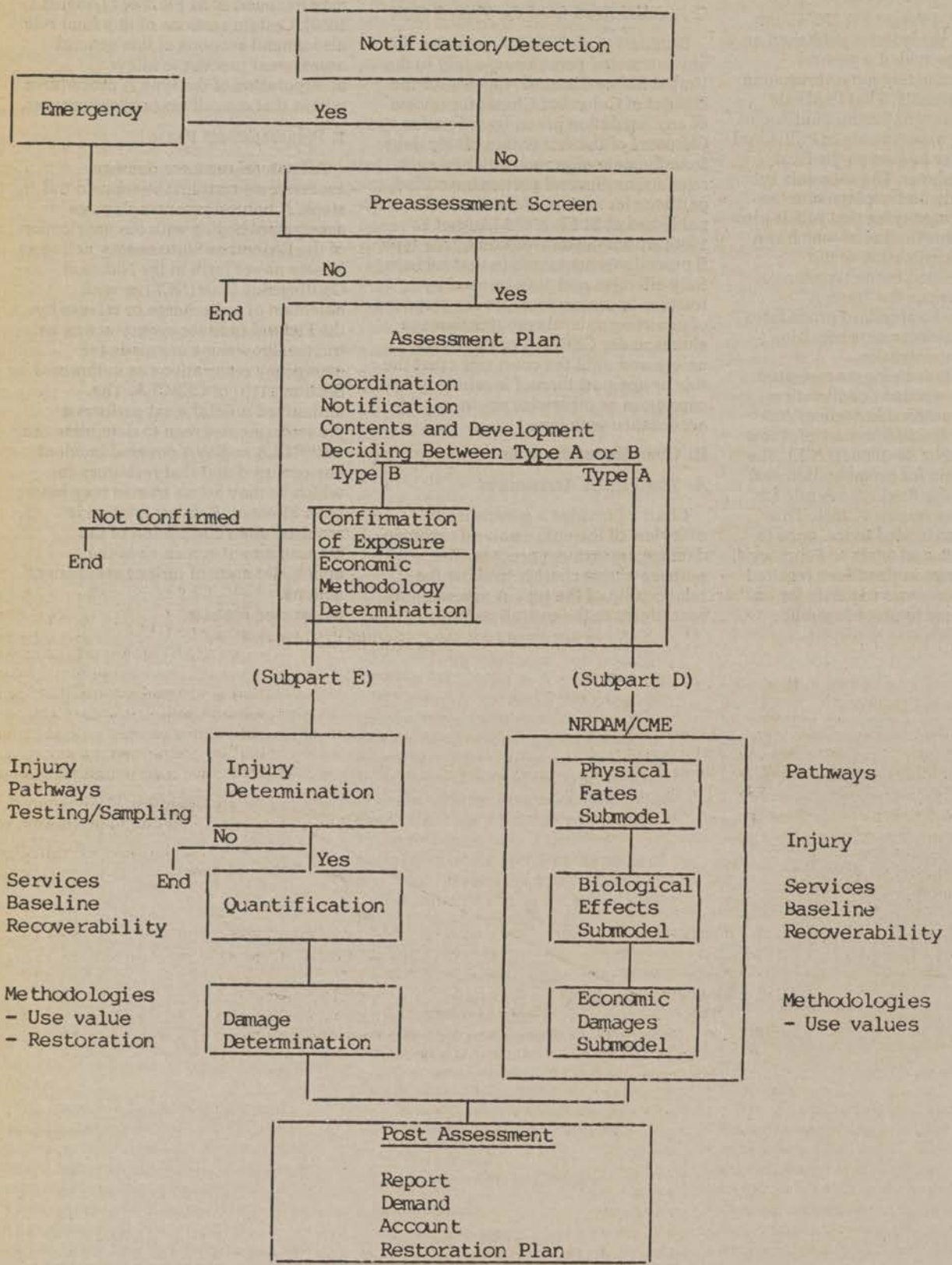
Chart I - NATURAL RESOURCE DAMAGE ASSESSMENT PROCESS



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2. Assessment Plan

An Assessment Plan is required prior to initiating an assessment using either the type B or type A procedures. The level of detail contained in the Assessment Plan should be consistent with the requirements for reasonable cost. The authorized official must also comply with the requirements for coordination with co-trustees, identification and involvement of the potentially responsible party, and public involvement in the development of the Assessment Plan. Unlike the plan for a type B assessment, the Assessment Plan for a type A assessment need not provide a confirmation of exposure, nor is an Economic Methodology Determination required. The Assessment Plan for a type A assessment does require a determination of whether a type A or type B assessment will be performed, with supporting documentation. Guidance is provided in § 11.33 of this final rule pertaining to the selection of a type A or type B assessment for resources affected and the information required in the type A Assessment Plan. A list of the specific data inputs required for a type A assessment for coastal and marine environments is given in § 11.41(c) of this Part. The Assessment Plan for this type A assessment shall document how the specific data inputs were derived.

3. Injury Determination, Quantification, and Damage Determination

The type A procedure contained in this final rule provides for simplified assessments of damages in coastal and marine environments. The rule uses a computer model referred to as the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). The specific data inputs listed in § 11.41(c) for the type A Assessment Plan provide the incident-specific data required to use the NRDAM/CME.

The NRDAM/CME determines the pathway of contamination through a physical fates submodel. Natural resource injury is determined through the interaction of the physical fates and biological effects submodels. Quantification of the effects of the discharge or release is determined within the biological effects submodel. The baseline of the natural resources, contained in the NRDAM/CME data bases, and both the change in services and resource recoverability are calculated. The NRDAM/CME performs the Damage Determination through the use of an economic damages submodel. The economic damages submodel incorporates use value methodologies to determine damages. An economic data base is contained in the NRDAM/CME that uses market and nonmarket prices for the services provided by the natural resources. A description of the NRDAM/CME and sources of data that may be applicable for input to the NRDAM/CME is contained in Section II.B. of this preamble.

4. Post-Assessment Phase

Upon completion of the NRDAM/CME computations, the authorized official is returned to the general natural resource damage assessment process. The NRDAM/CME provides a printed output that summarizes the mathematical computations performed to derive the damage amount. The printed output of the NRDAM/CME provides the documentation of the results of the assessment and is to be included within the Report of Assessment. This final rule amends §§ 11.91 and 11.93 to incorporate the damages determined through type A assessments into those provisions. Further discussion of these amendments is contained in Section II.C. of this preamble.

B. Overview of the NRDAM/CME

1. General

This final rule provides for the use of the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) to assess damages to natural resources resulting from a discharge or release of an oil or hazardous substance occurring in a coastal or marine environment. A detailed description of the NRDAM/CME and its data bases can be found in "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments" (NRDAM/CME technical document), prepared for the U.S. Department of the Interior by Economics Analysis, Inc., Wakefield, R.I., and Applied Sciences Associates, Narragansett, R.I., DOI 14–01–0001–85–C–20, January 1987, incorporated by reference in this rule. Copies of the NRDAM/CME technical document containing the NRDAM/CME can be obtained by writing to the address given at the front of this preamble, until June 2, 1987, after which the NRDAM/CME and its technical document will be available through the National Technical Information Service/U.S. Department of Commerce (NTIS), 5285 Port Royal Road, Springfield, VA 22161; PB87–142485; ph: (703) 487–4650. The source code for the NRDAM/CME is listed in hard copy in Appendix H of the NRDAM/CME technical document. Also, the source code is available on computer diskette from the Department at the address given at the front of this preamble.

The Department has made it explicit in this final rule that the NRDAM/CME as contained in this rule is regulatory in nature. Any changes to the NRDAM/CME, or the data bases included in the NRDAM/CME, can only be implemented through a notice and comment rulemaking. To obtain the rebuttable presumption provided for in CERCLA for type A assessments in coastal and marine environments, the trustee must use the type A NRDAM/CME procedure contained in this rule.

The NRDAM/CME contains the chemical, biological, and economic data required to determine injury, quantify that injury, and determine damages for many types of discharges or releases affecting natural resources and occurring in the coastal and marine environments of the United States, and its territories and possessions. To apply the NRDAM/CME, the authorized official need only supply the necessary incident-specific data. Minimal actual field observation is necessary.

The NRDAM/CME is comprised of the physical fates, biological effects, and economic damages submodels. These submodels parallel the steps taken in a type B procedure as discussed in the overview section of the rule published at 51 FR 27674. The physical fates submodel includes a determination of a pathway as found in the Injury Determination phase of the type B procedure. The interaction of the physical fates and biological effects submodels determines injury, mirroring the Injury Determination phase of the type B procedure. The biological effects submodel determines the services reduction, and the baseline services, and includes a resource recoverability analysis as reflected in the Quantification phase of the type B procedure. Finally, the economic damages submodel calculates dollar amounts for compensation for injuries based on the use value methodologies described in the Damage Determination phase of the type B procedure.

The NRDAM/CME determines injury as a result of a discharge or release, for: (1) Direct mortality to adult, juvenile, and larval fish and shellfish, waterfowl, shorebirds, seabirds, fur seals, and lower trophic organisms due to toxic concentrations of the spilled substance; and (2) indirect mortality to adult, juvenile, and larval fish, shellfish, waterfowl, seabirds, shorebirds, and fur seals due to a loss of foodstuff from the food web. The NRDAM/CME, however,

does not itself determine injuries resulting from closures to fishing areas, hunting areas, or public beaches. Information on the extent and duration of these injuries is an input to the NRDAM/CME that must be supplied by the authorized official. In addition, this type A procedure does not incorporate possible injuries to air or ground water resources, or to biological resources that use the services of the air or ground water resources, that may occur due to the discharge or release.

Damages are calculated in the NRDAM/CME for direct and indirect mortality to adult, juvenile, and larval fish and shellfish, waterfowl, shorebirds, seabirds, fur seals, and lower trophic organisms. The NRDAM/CME also calculates, based on input supplied by the authorized official, damages due to the closure of a fishing area, the closure of a hunting area, or the closure of a public beach due to the discharge or release. The areal extent of a fishing area or a hunting area subject to closure is a data input made by the authorized official based upon the authorized official's determination of the actual area closed, not a parameter developed from the NRDAM/CME. The length of beach closed, if any, is also an input made by the authorized official. Data on the length of beach closed is required, rather than the area closed. This is because most of the State-supplied visitation data was in the form of trips made to, and linear footage of, public beaches. Use of this data allowed calculation of trips made per foot of public beach. In addition, total visits forgone and the value of each visit are adjusted, without further authorized official input, for the time of year that the closure of the beach took place. Only closures that can be documented to have resulted from the discharge or release being assessed can be the basis for inputs to the NRDAM/CME. In addition, fishing area and hunting area closures due to a public health threat must be based upon previously collected sampling and analysis.

The NRDAM/CME requires data from two sources: (1) The data bases incorporated in the NRDAM/CME; and (2) incident-specific data derived by the authorized official. The authorized official must document in the Assessment Plan all incident-specific inputs to the NRDAM/CME. The incident-specific input includes information such as the type, amount, location, and date for each discharge or release, and environmental conditions, which should be available from the On-Scene Coordinator (OSC), normally the U.S. Coast Guard in coastal and marine areas. The OSC may often have available other pertinent information, such as the mean ocean surface current and the mean wind speed and direction at the approximate time of the discharge or release.

Information on data input parameters that were not specifically measured at the time of the discharge or release is available from a number of sources. Surface currents can be obtained from the *Surface Currents* atlas series published by the Department of Navy, Naval Oceanographic Office, Bay St. Louis, NSTL Station, MS 39522, and available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. Tidal velocities can be obtained or calculated from data values available in the *Tide Tables* or *Tidal Current Tables* published annually by the National Oceanographic and Atmospheric Administration (NOAA) National Ocean Service. More detailed information on tides for some locations can be found in *Tidal Current Charts* or *Tidal Current Diagrams*, also published by NOAA. Information on distance to land boundaries and bottom types can be found in *Standard Nautical Charts*. All of these NOAA documents are published by geographic regions and may be ordered from: U.S. Department of Commerce, Distribution Branch, NCG 22, Riverdale, MD 20737–1199; (301) 436–8194. Another source of information on bottom types or sediment characteristics is the National Geophysical Data Center, which has data files that can be searched by location. The address is: National Geophysical Data Center, NOAA/NESDIS, Mail Code E/GC, 325 Broadway, Boulder, CO 80303; (303) 497–6487.

The National Oceanographic Data Center collects historical survey data for a large number of variables, including surface current, upper and lower water column depth and density, suspended sediment concentration, and wind speed and direction, though not all information may be available for a specific location or time period. The Center can be contacted for an inventory of the data available for a particular location at: National Oceanographic Data Center, NOAA/NESDIS, E/OC21, 1825 Connecticut Ave. NW, Washington, DC 20235; (202) 673–5549. A User's Guide to their data files can also be obtained at that address.

Similar information on weather-related parameters at the approximate time of the discharge or release, including air temperature, wind speed, and wind direction, is available from the National Climatic Data Center. The Center's address is: National Climatic Data Center, NOAA/NESDIS, Federal Building, Asheville, NC 28801; (704) 259–0682.

2. Physical Fates Submodel

The physical fates submodel determines the transport of the substance in the water pathway. The authorized official supplies information on the type and amount of substance spilled, weather conditions, the physical conditions of the coastal or marine environment in which the discharge or release occurred, whether the discharge or release occurred in the intertidal or subtidal area, and when and where a cleanup of the substance occurred. Although the submodel supplies a default set of values for some environmental parameters, the authorized official must enter specific parameters describing the currents, tidal velocities, wind speed and direction, water depths, and air temperature. Using all information on the environmental parameters, the submodel calculates the expected concentration and transport of the substance over time.

If mixtures or multiple substances are discharged or released, the authorized official must select one of these substances and apply the NRDAM/CME to that one substance. The NRDAM/CME assesses damages for mixtures or multiple substances through an evaluation of the fate and effects of the selected substance. The NRDAM/CME may be run more than once for the same substance discharged or released, if an application of the NRDAM/CME indicates that the surface slick or toxic concentrations in the water column have migrated beyond the original study area.

For each substance in the chemical data base, various physical, chemical, and toxicological properties are listed (see Appendix C of the NRDAM/CME technical document). Based on these properties, the physical fates submodel incorporates such factors as evaporation/volatilization, spreading, entrainment, and settling, in determining the fate of the substance. This information on the substance parameters was derived from a review of the technical, chemical, and toxicological literature. Parameter estimates for which there was reliable information were included in the data base. This submodel allows for the cleanup of spilled substances. Cleanup is defined in the NRDAM/CME as the removal of chemical mass from the coastal and marine environment, and does not include normal management actions.

The physical fates submodel simulates the dispersion of the pollutant over space and time in each of four layers in the subtidal area: sea surface; upper water column; lower water column; and sediments. The physical fates submodel distributes a contaminant dynamically among these layers. The physical fates submodel establishes a fixed grid system over the seafloor, with the grid size determined by the characteristics of the incident and the dimensions of the study area. For an incident that forms a surface slick, the grid size is set equal to the expected diameter of the slick at the end of the first day. For a pollutant that sinks into the water column, the grid size is set equal to the diameter of the resulting convective descent cell when descent ceases, either at the seafloor or at equilibrium in the water column. This information is passed to the biological effects submodel, which then calculates the biological effects of those concentrations.

If a discharge of oil or release of a hazardous substance occurs in the intertidal area, the NRDAM/CME will determine the area affected and the length of time that the area is affected. The NRDAM/CME assumes that 100 percent mortality occurs wherever the intertidal area is covered by the substance discharged or released. Over time, the area affected in the intertidal area and, consequently, the area of 100 percent mortality, decreases.

The quantification of the loss to biological resources injured by the substance is determined by the interaction of the physical fates and biological effects submodels. The effect of an incident on marine organisms depends on the concentration of the substance and duration of exposure in the physical environment where the organisms live. Below some threshold level, there is no lethal impact. Above this threshold level, the impact increases with toxic concentration and duration of exposure up to a point of 100 percent mortality. A threshold concentration level is given in the chemical data base and is used to derive a temperature-corrected threshold concentration level in the NRDAM/CME. The physical fates submodel calculates concentration and time of exposure. The biological data base contains estimates of biomass per area. The interaction of the physical fates and biological effects submodels calculates the weight of organisms killed as a function of concentration and time of exposure. The weight of organisms killed is integrated over space and time to calculate total mortality. Mortality may continue from the time of the incident until the point of time that the contaminant has dispersed to the point below which no threshold toxicity occurs.

3. Biological Effects Submodel

The biological effects submodel receives data from four sources: the physical fates submodel; the chemical data base; the biological data base; and incident-specific input from the authorized official. The authorized official supplies such incident-specific information as whether the incident occurred in the subtidal or intertidal area, ecosystem province type, predominant bottom type, whether the incident occurred in the marine or estuarine environment, and the extent of beach, hunting, or fishing area that was closed due to the incident.

The location of an incident is important for determining the number and types of organisms killed or affected. The information supplied by the authorized official allows the NRDAM/CME to take into account variations in biomass and productivity in the coastal or marine environment. For the biological data base, these characteristics of the incident location input by the authorized official define the specific portion of the biological data base for the specific incident. The data supplied by the biological data base include estimates of adult biomass per area for an excess of 130 individual species, numbers of larvae per area, and rates of primary, zooplankton, and benthic productivity.

The biological data base contains individual species information that is grouped into thirteen species categories for the NRDAM/CME. The parameters supplied to the biological effects submodel by the data base include estimates of: natural and fishing mortality rates, growth rates, time to and age at recruitment, and life span; and larval mortality rates. This information was obtained by a review of existing information in technical fisheries literature and catch data. Resource estimates for which there was reliable information were included in the biological data base. With this information, the biological effects submodel calculates the loss of biomass due to both direct and indirect mortality.

Losses to biological resources considered in the NRDAM/CME come from two sources. The first source is short-term injury due to acute lethality, such as death of adult organisms and lost productivity. Because of this short-term injury, long-term losses occur that include lost recruitment due to larvae and juveniles killed, and lost growth of adults killed. For hunting and fishing area closures the authorized official supplies information on the area, duration, and species category closed due to the incident. In the case of fishing area closures, the NRDAM/CME determines the lost catch in the species category or categories attributable to the closure due to the incident. In the case of hunting area closures, the NRDAM/CME determines the lost harvest of waterfowl attributable to the closure due to the incident.

4. Economic Damages Submodel

The economic damages submodel determines the monetary amount of compensation for injuries. The economic damages submodel uses information obtained from three sources in order to determine this compensation. The first source is information on short- and long-term losses to biological resources from the interaction of the physical fates and biological effects submodels. The second source of information is that supplied by the authorized official. The third source is the economic data base. Information supplied by the authorized official includes type of beach, length of beach and time closed, area, duration, and species category affected for a fishing area and a hunting area closure, and information on the implicit price deflator for the Gross National Product for the quarter in which the discharge or release occurred, as found in *Survey of Current Business*, published monthly by the U.S. Department of Commerce/Bureau of Economic Analysis. The NRDAM/CME incorporates the use value methodology of the Damage Determination phase of the type B procedures. As specified in the type B procedures, the measurement of damages used in the NRDAM/CME is based on the reduction in the in situ value of the injured resources. The economic damages submodel measures damages from the time of the incident through the period of resource recovery. In order to arrive at a current value of damages that may occur over several years, the economic damages submodel provides the present value of all future dollar losses.

The economic data base contains province-specific, ex-vessel prices for the value of commercially harvested fish and shellfish not caught due to the discharge or release. These prices are four-year averages for 1982–85. In order to measure lost use value, fish resources injured by a discharge or release are allocated between commercial and recreational harvests forgone. Lost in situ value for commercial fisheries is the change in the total value of landings minus the change in the cost of

harvesting the fish. For commercially harvested fish, this lost in situ value is given by ex-vessel prices. For recreational fisheries, lost in situ value is the loss in sportsfishing benefits, minus the change in the cost of catching the fish.

The economic data base contains nonmarket marginal prices for the value of waterfowl, recreational fishing, seabirds, and shorebirds. The economic data base also contains information on visitor days and length of stays for National Seashores and other public beaches. Beach days lost are valued using an average nonmarket price obtained from existing studies of recreational beach use. All nonmarket values come from a review of the economics literature in their respective areas. All recreational and nonmarket values and commercial prices for which there was reliable information were included in the economic data base.

The NRDAM/CME is applicable to many incidents that may occur in the coastal and marine environment. Limitations in the availability of appropriate technical information for inclusion in the chemical, biological, and economic data bases, as well as limitations in the present state-of-the-art in modeling such incidents, constrain the overall applicability of the NRDAM/CME. These limitations are reflected in the criteria to be used in deciding whether to use a type A or a type B procedure for a particular incident.

C. Concepts Embodied in the Rule.

1. The NRDAM/CME: Modeling Damages

The type A procedure described in this rule uses a computer model to perform the numerous mathematical computations required for the simplified assessment of damages to natural resources in coastal and marine environments. This computer model, the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME), is designed so that it can be run on widely available microcomputers.

The Department has determined that the use of a computer model provides for the type of efficient, simplified assessment procedure called for in section 301(c) of CERCLA. The NRDAM/CME determines compensation for injuries to natural resources consistent with the principles established in the type B procedures, published on August 1, 1986 (51 FR 27674). Though providing a simplified assessment procedure for use by the authorized official, the NRDAM/CME is a complex program and represents the state-of-the-art in computer modeling. The NRDAM/CME, including its scope and limitations, was developed and reviewed by a number of experts, both within and outside the government, in the fields of marine biology, computer modeling, natural resource economics, and toxicology. The data bases are extensive and contain information for a wide range of conditions. These data bases contain the best available information to allow for the interaction of the three submodels to determine a dollar value for compensation.

The NRDAM/CME was the subject of extensive comments during the public comment period, including thousands of test runs. Improvements to the NRDAM/CME as a result of that thorough review are detailed in Section III of this preamble. The NRDAM/CME technical document, entitled "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant for CERCLA Type A Damage Assessments," which was also available for public review, has been revised based on comments received. The NRDAM/CME technical document includes the NRDAM/CME and contains a detailed discussion of the NRDAM/CME, its documentation, and its limitations.

The NRDAM/CME is the first type A procedure being developed by the Department of the Interior. At some future date the NRDAM/CME may be expanded or new systems developed to cover other ecosystems, natural resources, substances, and different types of incidents. Coastal and marine environments were chosen as the subject of the first type A procedure because much more extensive information was available on the fate and effects of discharges or releases of oil or hazardous substances in these environments than for other ecosystems and natural resources.

2. Selecting Between a Type A or Type B Assessment

This final rule requires that whenever an injury to a natural resource due to an incident occurs in the coastal or marine environment a type A assessment shall be performed unless the limitations of the NRDAM/CME make it inappropriate to the given incident. The assumptions and data bases contained in the NRDAM/CME constrain its applicability to only selected types of discharges or releases and resources. For example, the discharge or release must occur in, or enter into, a coastal or marine environment; the substance discharged or released must be contained in the chemical data base of the NRDAM/CME; and estimates of the type and quantity of biological resources potentially injured should not differ significantly from the averages listed within the biological data base for the area in which the discharge or release occurred.

Whether certain of these conditions exist will necessarily be a subjective decision required by the authorized official in some incidents. The NRDAM/CME, including its data bases, is based upon averaged values and may not necessarily reflect the actual events of any specific incident. If the authorized official determines that one of the conditions listed in § 11.41(c) is not satisfied, the authorized official may make a determination that the NRDAM/CME is not applicable to the discharge or release, or to the resource potentially injured by the discharge or release, and may use a type B procedure.

Conversely, the potentially responsible party may prefer that a type B assessment be performed for a particular incident. The rule allows the potentially responsible party to request that a type B assessment be conducted even if the NRDAM/CME is applicable to the discharge or release, on the condition that the potentially responsible party provides documentation of the reasons supporting the request and agrees in a timely manner to advance and ultimately bear responsibility for all reasonable costs of the assessment regardless of the outcome. In this case, the authorized official must perform a type B assessment. The authorized official may allow the potentially responsible party to perform all or any part of the assessment under the direction, guidance, and monitoring of the authorized official. The authorized official, however, retains all decisionmaking authority as to the performance of the assessment. If there are multiple potentially responsible parties, and they do not agree on whether a type B assessment should be requested, the authorized official has the authority to make the selection, even if one of the potentially responsible parties makes a request and agrees to advance the costs. As with all other steps in the assessment process, appropriate documentation of the determination to use a type A or a type B procedure, or both, must be incorporated in the Assessment Plan, and made available for public review and comment before a final decision is made.

The potentially responsible party will be offered the opportunity to exercise the option to request that a type B assessment be performed even if the

NRDAM/CME is applicable to the discharge or release after: (1) The preassessment screen has been completed, including the identification of resources potentially at risk; and (2) the authorized official has determined that a type A assessment will be performed. The Assessment Plan will include documentation setting forth the fact that such an opportunity was offered to the potentially responsible party, and that party's decision as to whether (1) the type B assessment will be performed upon its advancement of costs, or (2) a type A procedure will be used. Should the potentially responsible party select type B procedures, the Assessment Plan will be completed on that basis and all requirements for a type B assessment must be fulfilled, including confirmation of exposure and determination of injury.

3. Parallel Assessments

This final rule contains a new provision, § 11.15(a)(1)(iii), that allows the authorized official to perform parallel type A and type B natural resource damage assessments for separate natural resources affected by a single discharge or release. Parallel assessments are assessments stemming from one incident that requires the use of both type A and type B procedures. The natural resources considered in the parallel assessments must be separate resources to preclude double counting of damages. If a discharge or release occurs, either originally or through migration, in a coastal or marine environment, but the resources potentially affected are not addressed in the NRDAM/CME or its data bases, a parallel type B assessment may be performed for those separate resources.

If parallel assessments are performed, all the requirements applicable to each of the respective type A or type B assessments must be satisfied. Parallel assessments may not be used to measure different types of injuries to the same resource or to calculate different service flows or use values for the same resource. In those cases where the limitations of the NRDAM/CME make use of the type A procedures inappropriate, then the type B procedures must be used for the entire assessment.

4. Disposition of Type A Damage Awards

The natural resource damage assessment process requires the establishment of an account when the damage award is made. Actions taken to restore the injured natural resource are to be set forth in a restoration plan, and the monies in the account are to pay only for actions described in an approved plan. For type A assessments, it may not always be feasible to prepare a separate full scale restoration plan for each award, as required for type B assessments, since amounts recovered may be less than amounts recovered as a result of a type B assessment. These smaller recoveries may result since the type A assessments are generally designed for smaller and simpler incidents than type B assessments.

This final rule provides that when recoveries occur from type A assessments the agency acting as trustee may apply several type A recoveries to one restoration plan, so long as the plan is intended to address the same or similar resource injuries as those identified in each type A assessment. One or more type A recoveries can be added to any existing restoration effort if a plan has been developed that incorporates similar requirements to those in the type B procedure. The requirements of the type B procedure are that the plan incorporate: (1) Cost-effectiveness; (2) public participation; (3) a no-action alternative; (4) the use of interdisciplinary techniques; and (5) a thorough examination of alternatives as appropriate to the amount of the monies available and the extent of the existing restoration effort. The restoration plan must describe how sums from more than one recovery will be used for restoration, replacement, or acquisition of equivalent resources.

III. Responses to Comments

The Department received numerous comments on the proposed rule. The clarity and composition of these comments indicated that considerable time and effort was expended on analyzing the rule as well as the NRDAM/CME. The Department greatly appreciates the time and effort expended in developing the comments. Many comments commended the Department for avoiding the use of "look up tables" that might have dubious merit. These comments agreed that the factors considered by the rule and the NRDAM/CME were essential to any reasonable simplified assessment process.

The Department has maintained the concept of the NRDAM/CME in this final rule. At the same time, the final rule has benefited from the many constructive suggestions that have increased the NRDAM/CME's clarity and accuracy. Changes made to the proposed rule in response to comments are explained below. A number of additional minor changes of a non-substantive nature have been made to ensure clarity of purpose, to correct errors, and to conform to proper Code of Federal Regulations usage.

Many of the comments received on the proposed rule provided detailed, technical discussions of the assumptions, the mathematical formulations, and the calculations performed by the NRDAM/CME and described in the NRDAM/CME technical document. Some of these comments included discussions of specific literature cited in the NRDAM/CME technical document. The Department has responded to these technical comments in the discussion that follows. The Department has not included the full bibliographic source for the many references cited by comments or the references cited in response to these comments. Interested readers may, however, obtain the bibliographic source of these citations from the NRDAM/CME technical document.

Several of the comments on the proposed type A rule specifically incorporated comments that had been submitted on the proposed type B rule. The Department notes that it has fully responded to all comments on the type B rule in the preamble to the final type B rule, at 51 FR 27692–27725 (August 1, 1986), and, therefore, will not repeat those responses here. Any comments that raised new issues regarding their application to this type A rule have been included in the section-by-section responses contained in this preamble.

A. Section-by-Section Comments

Section 11.11 Purpose.

Rebuttable presumption

Several comments stated that, since this type A assessment is merely the application of a computer model with little discretion on the part of the trustee performing the assessment, there is no reason to restrict the rebuttable presumption to only those assessments performed by Federal trustees. One comment stated that limiting the rebuttable presumption to those assessments performed by Federal trustees might lead to State trustees' pressuring Federal officials to conduct or oversee all assessments.

The Department's reasoning for limiting the rebuttable presumption to Federal officials was explained in the preamble to the final type B rule. The reason for the limitation is not related to the expertise or the exercise of discretion of the State officials, the presumption is limited solely because the statutory language of CERCLA appeared to indicate that such a limitation was intended by Congress.

The Department notes that Congress has amended CERCLA to provide the rebuttable presumption to assessments performed by State trustees.

The proposed type A rule did not contain language pertaining to either § 11.11 or to the application of the rebuttable presumption to type A assessments. All language pertaining to the rebuttable presumption is contained in the final natural resource damage assessment rule published on August 1, 1986, which applies to both type A and type B procedures.

Section 11.15 Actions Against the Responsible Party for Damages.

Combined assessments

Two comments supported the provision in § 11.15(a)(1)(iii) of the proposed rule prohibiting a combination of the type A and type B assessments, stating that the two procedures are mutually exclusive since the type A rule relies on simplifications, aggregations of values and data, and minimal field observation, while the type B assessment relies on complex methodologies, specific values and data, and sampling and analysis.

Several comments, however, stated that a combination of type A and type B assessments would reduce the cost of assessments; using the type A assessment for such things as dead fish and other species or injuries covered by the type A rule and allowing the type B assessment for those resources and injuries not covered by the type A rule. Others reasoned that, if certain adjustments were made to avoid double counting, the use of a type A assessment within a type B assessment would avoid the waste of funds available for the assessment. One comment pointed out that the type B rule, at § 11.83(a)(4), states that the use of different methodologies may be appropriate for different resources. Finally, another comment suggested that the use of the type B assessment for certain species and resources not covered by the type A rule would serve an ancillary purpose of providing data that could be used for developing values for these species and resources in future type A procedures.

The Department continues to believe that type A and type B assessments should not be combined; however, the Department also recognizes that an incident may be separated into component parts to enable the authorized official to perform both a type A and a type B assessment for the same incident. In order to explicitly allow this situation, § 11.15(a)(1)(iii) of the proposed rule has been revised to provide that a type B assessment may be done in parallel with a type A assessment for the same discharge or release for those resources not covered by the type A NRDAM/CME. For example, if an oil spill injures fishery resources that are listed in the biological data base and marine mammals that are not included in the data base, the type A procedure could be used to assess damages to the fishery resources, and the type B procedure could be used to assess damages to the marine mammals. The type B procedures cannot be used in parallel with a type A assessment, however, to measure injuries to resources if those resources are considered by the NRDAM/CME or contained in its data base. For example, the type B procedures could not be used to assess sublethal injuries to fishery resources and the type A procedures used to assess mortality to the same fishery resources for the same discharge or release. Each procedure must be done in full and, consequently, they are not combined.

Parallel assessments are being allowed because the Department wishes to encourage the minimization of the costs of performing assessments whenever possible. Parallel assessments can be allowed only on this limited basis, however, because, as one comment pointed out, the philosophy of, data requirements for, and use of average values in the NRDAM/CME makes it inappropriate to combine the two procedures. The Department believes it is important to maintain a clear distinction between the two procedures because of their differences and because of the potential for double counting. New § 11.15(a)(1)(iii) explicitly states that parallel assessments must not double count damages.

Clean Water Act actions

Several comments stated that the Clean Water Act allows recovery only for restoration or replacement costs actually incurred, not for the "use value" of resources injured by discharges of oil, such as damages for the closure of a beach or for lost fish catch. Therefore, the comments stated, the type A procedure cannot apply to discharges of oil under the Clean Water Act since it assesses damages based upon lost use value. Several suggestions were made to deal with this perceived problem. One comment stated that the Department should incorporate restoration or replacement costs within the NRDAM/CME, including all costs of replacing or rehabilitating all injured marine mammals, and all injured fish, wildlife, and birds. Another suggested that the Department develop a separate model to reflect the coverage of the Clean Water Act.

While some comments agreed with the calculation of "use values" as an indication of the recoverable damages under the Clean Water Act, one, however, stated that if these damages are to represent the restoration or replacement costs, a commitment must be made to actually restore or replace the injured resource. Another stated that if the decision is made not to restore or replace the injured resource, then the restoration costs cannot be considered.

Several comments stated that the common law principle of damages should be followed in the type A assessment of damages, as it was in the type B rule; that is, allowing the trustee to claim the lesser of restoration or replacement costs or use values as damages for injured resources. These comments argued that requiring the trustee to assess the "use values" of the injured resource, where the restoration and replacement costs are less than the value of use forgone, is in violation of that principle.

In response to these comments, the Department believes that the type A rule can appropriately be used for purposes of the CWA because §§ 11.92 and 11.93 of the final rule (published on August 1, 1986), applicable to the type A assessment, require that all sums awarded as damages shall be used for the restoration or replacement actions described in an approved Restoration Plan. Therefore, all damages collected under the CWA in accordance with the type A rule will in fact constitute "costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance," as provided for in section 311(f)(4) of the CWA. The actions described in the approved Restoration Plan provide the commitment to actually restore or replace the injured resources.

The Department notes that the final type B rule, published on August 1, 1986, after the publication of the proposed type A rule, incorporated damages determined in accordance with the type A procedures of Subpart D into damages recoverable in CWA actions. For this reason, § 11.15(b) of the proposed type A rule has been deleted as unnecessary.

The type A rule calculates damages based on use values drawn from species values and pre-existing surveys and studies, as well as other factors that reasonably can be expected to affect the amount and type of injury to natural resources from a discharge of oil or

release of a hazardous substance. Use values were used rather than restoration or replacement costs because adequate data were not available to create a standardized model based on average values for restoration costs. Restoration costs do not lend themselves to such standardized use because, by definition, restoration costs would always be particularly incident-specific. Nor does the type A rule use organism replacement cost data to calculate damages because such a method used alone would consistently misrepresent damages because of its failure to incorporate ecosystem interactions. As with the type B rule, the type A rule requires that all monies collected as damages must be used to restore or replace the injured natural resources.

The Department believes that the type A rule properly reflects Congress' intent as to the simple, standardized procedures. While the legislative history (see Senate Report No. 96–848, 96th Cong., 2d Sess. 85–86 (July 11, 1980)) is not controlling because it is the discussion of the predecessor bill and not CERCLA as passed, it is the best assistance available to interpret Congress' intent as to the type A assessment procedures. The Senate Report indicates that the type A regulations are not to be based on field studies of the actual incident but perhaps on tables, matrices, or formulas that combine the factors listed such as habitat values, species values, and preexisting surveys and studies.

The suggestion that the regulations be related to units of discharge or units of affected area suggests some type of table or formula based on barrells spilled or acres affected. This approach suggests that the damage values must be based on some averaging of values and not on the specifics of any one incident. The underlying rationale for which averaged values to use is left to the determination of the Department with the suggestion from the Senate Report that "habitat values," "species values," and "preexisting survey and studies" may be appropriate sources for such values.

The Department has attempted to implement the legislative intent to create a range of assessment procedures. On one end of the spectrum is the type B rule, which provides procedures for individual incident-specific assessments for "major" incidents, that are designed to provide accurate measurements of injury and damage, and that may entail extensive assessment costs. On the other end of the spectrum is the type A rule, which utilizes limited incident-specific data and therefore is less accurate for any specific incident, but is designed to represent average injuries and damages for "minor" incidents and is inexpensive to conduct.

In summary, the Department believes that the type A procedure is an appropriate method for determining damages for purposes of section 311(f)(4) and (5) of the CWA, because the rule requires that all monies awarded as damages be used for restoration or replacement activities described in an approved restoration plan and the rule provides a simplified standardized method for determining the damages to be awarded as restoration or replacement costs under section 311(f)(4). In addition, and as is described below, the rule allows the option of using the type B assessment procedures in appropriate circumstances.

Offsetting—double counting

Several comments noted that the Department must maintain the distinction between public and private harms and ensure that damages under a type A assessment preclude tort actions for private damages. One comment stated that the NRDAM/CME properly handles damages that reflect private harms by not attempting to assess damages for economic losses suffered by private parties or local economies, such as local hotel or restaurant owners, fishermen, or owners of private beaches. This comment noted that the proposed rule does not consider multimarket or secondary economic effects, since CERCLA precludes double recoveries and recoveries for private harms. The Department agrees with this comment and notes that every effort has been made in this final rule to apply the principles described in the type B rule (51 FR 27674, August 1, 1986).

Some of the comments noted, however, that one of the most significant damage components under the NRDAM/CME is the market value of commercially valuable fish predicted to be lost due to a spill. The comments pointing out the fact that the NRDAM/CME relies heavily upon commercial values in valuing injuries noted that this focus on fish losses carries a potential for double recovery that is not recognized under the rule. Therefore, the comments stated that, where there are fishermen who could recover damages due to the incident being assessed, the NRDAM/CME could result in double recovery that would violate the spirit, if not the substance, of CERCLA's double recovery prohibition and should be avoided by the Department. These comments urged the Department to modify the NRDAM/CME to account for the possibility of such double recoveries. Another comment, however, stated that the value of a natural resource includes the use of that resource by all members of society, whether those members profit from their use of the resource or not.

The Department believes that the value of the commercial fish to the trustee is the economic rent generated by the harvest of the fishery resource. This economic rent is the in-place value of the resource. The Department considers that the correct measure of compensation due the public for injuries stemming from the discharge or release is the change in the in-place value of the fishing resource. This change in value is determined by taking the change in the landed price of the fish less the cost of landing the fish. The Department acknowledges that in some instances this economic rent may include elements of a potential claim by fishermen or other private parties. However, the value of the fishery resource to the trustee does not change because of this potential claim.

Another group of comments stated that the type A rule must permit an offset for any awards that may already have been assessed against any responsible party under the tort system. These comments pointed out that, since CERCLA does not contemplate dual damages, if damages are paid to the trustee by a potentially responsible party, recovery by the trustee must be set off against these tort claims where a tort award has been sought, or is likely to be sought.

The Department has not included any "offset" requirements as part of this final rule. The Department agrees that CERCLA does not contemplate double recoveries. The Department does not, however, believe that CERCLA precludes the recovery of different types of damages resulting from the same injury. Therefore, present or prospective tort claim recoveries would be precluded by CERCLA only to the extent that they are recoveries for the same damages resulting from the same injury.

Section 11.20 Notification and Detection.

One comment suggested that the rule contain a requirement that, prior to deciding between a type A or a type B assessment or developing any Assessment Plan, the authorized official shall notify, in writing, any Indian tribe with trustee resources in the affected area and provide a reasonable opportunity for the tribe to consult on the Assessment Plan and the assessment procedures.

The Department agrees that, as appropriate, Indian tribes should be

consulted on the development of an Assessment Plan as well as the decision required in the planning process to perform a type A or a type B assessment. The Department points out that §§ 11.20(c) and 11.32(a)(1) of the final rule published on August 1, 1986, already require that the authorized official ensure that all other affected Federal and State agencies are notified that an Assessment Plan is being developed. The Department will assure, to the extent practicable, that proper notification of affected Indian tribes or individuals will take place.

Section 11.24 Preassessment Screen—Information on the Site.

Several comments agreed that those injuries and damages specifically excluded in the Clean Water Act should also be excluded from the type A assessments, as provided in § 11.24(c). The Department agrees, and notes that § 11.24(c) was included in the final rule published on August 1, 1986. The provisions of the preassessment screen are applicable to all assessments.

Section 11.32 Assessment Plan—Development.

One comment stated that the type A rule should contain a specific method for determining a lead agency where more than one agency has responsibilities, otherwise, there may be two or more assessments for a single incident with differing results. A method for determining the lead agency, the comment continued, should be included along with a requirement for a single coordinated analysis, not merely an encouragement to cooperate.

The Department notes that the general natural resource damage assessment process published on August 1, 1986, contains provisions for determining a lead agency. The Department considers that these provisions are adequate for determining a lead agency in performing a type A assessment. Further discussion on selection of a lead agency is contained in the preamble to the August 1, 1986, final rule.

Section 11.33 Assessment Plan—Deciding Between a Type A or Type B Assessment.

Special resources

Several comments stated that, where special resources are likely to be injured by a discharge or release, the authorized official should not be given any discretion to use the type A assessment, but should be compelled to perform a type B assessment regardless of the size of the discharge or release. They stated that a type B assessment would be the only way to protect such resources. Other comments stated that special resources should not be the only resources requiring the type B assessment, that the potential injury of all marine mammals and other species that have significant option and existence values should require the use of the type B procedure. Some of these comments also stated that the type A rule should specifically define the species that would be included in the definition of "special resources." One comment, however, stated that the type A discharges or releases are unlikely to involve any rare or endangered species.

The final type B rule deleted the special resource exception from the rule. Unless and until the final type B rule is amended, all references to special resources in the type A procedures are deleted. Consequently, the special resource criterion that was listed in § 11.33 of the proposed rule has been deleted from this final rule. The Department notes, however, that the criterion listed in § 11.33(b)(1)(ii) covers those instances when use of the NRDAM/CME might be inappropriate because so-called "special resources" might be affected. For example, it may not be appropriate to use the NRDAM/CME if the estimated quantity and type of resources potentially injured differ significantly from those listed in Appendix B of the NRDAM/CME technical document.

Quantity and type

One comment stated that requiring the determination in the proposed rule in § 11.33(a)(1)(iii) [now (b)(1)(ii)] that the quantity and type of resources potentially injured differ from the assumptions of the model requires field observations of pathway and injury, determinations that the NRDAM/CME was intended to replace. As a result of this requirement, the cost of the type A assessment could be significantly increased. Another comment pointed out that this requirement might preclude the use of the type A assessment in the areas in which it was designed to be used—those where the incident or the injury is expected to be small.

The Department disagrees with these comments. The determination is not intended to require extensive field observations, but should be based on information readily available to the authorized official in the form of, for example, OSC reports, and pre-existing knowledge of the resources of concern in the area possibly affected by the spill. The authorized official should, as a general rule, have some knowledge of the resources of concern in the area. This knowledge will normally come from the everyday activities undertaken pursuant to the official's management duties. In addition, members of the public or other Federal or State agencies may also have information on resource stocks that can be of use to the authorized official. Only if, based on this type of readily-available information, the authorized official has reason to believe that the biological resources listed in Appendix B of the NRDAM/CME technical document are not representative of the resources of concern in the area potentially affected, should this criterion trigger a type B assessment.

"Relatively minor" and "short duration"

Several comments stated that the terms "relatively minor" and "short duration," in the proposed rule at § 11.33(a)(1) (iv) and (v) [now (b)(1) (iii) and (iv)], should be defined either quantitatively or qualitatively to ensure consistency in the application of these terms in assessments, since the authorized official, the potentially responsible party, and the general public may not be in agreement as to the meaning of these terms in actual assessment situations. One comment stated that, since the legislative history of section 301 of CERCLA only used the term "minor" in describing the type of incident to be covered by the type A assessment, the word "relatively" should be dropped altogether. Another comment, however, stated that the general terms of "relatively minor" and "short duration" are necessary to allow flexibility in the application of the rule.

The Department agrees with the comment that stated that the qualifier "relatively" should be dropped from the phrase "relatively minor," and § 11.33(b)(1)(iv) has been revised accordingly. However, the Department also agrees that all of the criteria in this section need to give the authorized official the flexibility to make a decision on the applicability of a type A or a type B assessment on a case-by-case basis. This is necessary because the NRDAM/CME's applicability will be determined, in many cases, by site-specific characteristics of the incident. Because of this, the criteria in this section remain general.

Some comments stated that the requirement that the type A assessment be used only in relatively minor, single events of short duration should be deleted from the rule so that the NRDAM/CME can be used whenever possible to avoid costly and time-consuming type B assessments. One comment stated that the Department should explain the limitations of the

NRDAM/CME as to the size of the discharge or release for which it is applicable. Another comment stated that the size of the discharge or release should be important for reporting purposes only. Another comment stated that even small discharges or releases may cause large, irreversible, long-lived, and catastrophic injury. One comment noted that the size or seriousness of the injury should not be the determining factor for performing a type A assessment; rather that the difficulty of analyzing or quantifying the injury should be the test. Finally, some comments stated that the limitation of the type A assessment to events of short duration rules out many events of a chronic nature that should be available for a type A assessment.

The Department disagrees with the comment that the terms "minor" (as used in the proposed rule) and "single events of short duration" should be deleted from this final rule. These terms are, in fact, limitations of the NRDAM/CME or are found in the legislative history of section 301(c) of CERCLA. As such, these terms are incorporated in the guidance describing the applicability of the NRDAM/CME. For example, the NRDAM/CME was designed for single event incidents. This means that some error in quantifying the mortality to biological resources is introduced when multiple discharges or releases are evaluated with the NRDAM/CME. The error associated with the difference between the effects of a single versus multiple releases decreases as the time from the single discharge or release or the last multiple discharge or release increases. The question of the acceptability of the magnitude of this error is determined by whether reasonable cost and cost-effectiveness can be achieved by performing a type B assessment rather than using the NRDAM/CME. The authorized official, the potentially responsible party, and the public will all have an opportunity at the Assessment Plan phase to evaluate the applicability of the NRDAM/CME to a specific incident. The NRDAM/CME technical document discusses more fully the applicability and limitations of the NRDAM/CME.

The Department agrees that the size of the discharge or release is important for reporting purposes, but notes that the size of the discharge or release is not the determining factor as to whether a natural resource damage assessment is performed under CERCLA. The Department points out that even small discharges or releases can cause injury. This potential for injury is a primary reason that no de minimis level of a discharge or release is given in this final rule (de minimis levels are discussed below). Injury, and consequently damages, are a function of many incident-specific parameters, not just the size of the discharge or release. Therefore, the interpretation of the term minor is left to the authorized official on a case-by-case basis.

The Department recognizes that the criterion that the discharge or release be of short duration may, in fact, limit the applicability of the NRDAM/CME. However, this limitation is necessitated by the current state-of-the-art in computer modeling and is required at the current time. As the state-of-the-art in computer modeling expands, the Department may at some future date expand this model to increase its applicability, which could include the evaluation of long-term or chronic discharges or releases.

Other comments pointed out that one of the reasons for limiting type A assessments to "relatively minor" incidents is to avoid the situation where a large discharge or release might impact the market price of the injured resource. One of these comments stated that, if this is the reasoning behind the "relatively minor" criterion, that the Department should clarify that reasoning. This comment went on to agree that an incident that is large enough to affect market prices or to have a major adverse ecological impact would require a type B assessment. Another comment, however, argued that even a small incident can change the market price of some resources because of the possible effects on the impacted resources. Another comment suggested that, since the NRDAM/CME considers only use value in determining economic damages, an additional criterion should be added to provide that a type A assessment would be inappropriate where the estimated injury to the biological resources is expected to result in significant diminution of any intrinsic economic value.

The Department agrees that the term "relatively minor" was considered, in part, as a proxy for a criterion on the stability of relative prices. In order to make this criterion explicit, the Department has added a new criterion in § 11.33(b). This new criterion specifies that the discharge or release is not expected to cause prices to differ significantly from those listed in Appendix F of the NRDAM/CME technical document. One method to incorporate this assumption is for the authorized official to derive a post-discharge-or-release market price index and compare this with the market price index listed in the NRDAM/CME technical document. If, in the opinion of the authorized official, these indices are significantly different, the NRDAM/CME may be inappropriate for the purposes of assessing damages.

The Department disagrees with the comment on intrinsic value. Intrinsic value can be taken to be one of two types of values, either non-consumptive use values, e.g., bird watching, or option or existence values. The Department has incorporated non-consumptive use values in the NRDAM/CME and does not believe that further criteria are required to address that issue. In accordance with the type B regulation, option and existence values were not incorporated in the type A NRDAM/CME, since consumptive or non-consumptive use values were available for all resources valued in the NRDAM/CME.

De minimis levels

Several comments requested that "de minimis" levels be established for the type A assessment rule stating that such de minimis levels are necessary to avoid unwarranted assessments. One comment stated that de minimis levels can be operationally defined by the NRDAM/CME as the level at which no damage results from a discharge or release. Another comment stated that the lack of de minimis levels implies that any discharge or release results in significant injury to natural resources, a position that is contrary to actual experience. One comment stated that, to meet the "cost-effective" and "reasonable cost" concepts of the type B rule, a de minimis level is necessary to avoid assessments for insignificant damage amounts. This comment went on to state that where the costs of assessment are likely to exceed the assessed damages, the authorized official should be allowed to find a de minimis effect and not perform an assessment. Another comment pointed out that, in the absence of a de minimis provision, the potentially responsible party may have to pay for injuries that cannot be measured.

The Department recognizes that, in some instances, the application of the NRDAM/CME to an incident-specific discharge or release can result in a zero damage amount. The Department does not believe, however, that the establishment of "de minimis" levels of a discharge or release is either necessary or appropriate for inclusion in the type A assessment rule. Accordingly, the Department has not revised the rule to include specific "de minimis" quantities for each of the oils

and hazardous substances contained in the chemical/physical data base of Appendix C.

The NRDAM/CME requires that various incident-specific environmental parameters be used to describe the conditions that existed at the time of the discharge or release. Wind speed, direction and temperature, depth of the water column, surface current velocity, and distance and location of land boundaries exemplify some of these incident-specific parameters. All of these incident-specific parameters are interactive within the NRDAM/CME and affect the potential fate of the substance in the coastal and marine environments. The resulting injuries and economic damages are further tempered by the time of year of the discharge or release, the ecological province, and the specific bottom type of the estuarine or marine system. All of these interrelated factors would be required to be considered in the establishment of any "de minimis" levels. As a result, separate "de minimis" levels would have to be established for every potential discharge or release site in the entire coastal and marine environment for each oil and hazardous substance contained in the NRDAM/CME, for all potential incident dates, bottom type, province type, subtidal versus intertidal, marine versus estuarine, and for all potential variations of the environmental factors. The Department considers that such an undertaking would be impossible and unnecessary. For incidents where the NRDAM/CME is applicable, the incident-specific parameters will automatically determine whether a given discharge or release generates a positive damage amount.

The Department also believes that the establishment of "de minimis" levels to "avoid unwarranted assessments" is inappropriate because the NRDAM/CME does not address all natural resources of the coastal and marine environments, such as air, for which injuries may have occurred as a result of the discharge or release. The Department points out that the general natural resource damage assessment process published at 51 FR 27674 (see also Chart 1 of this preamble) provides adequate guidance, criteria, and screening requirements to avoid unwarranted assessments.

Reportable quantities

Some comments suggested that "reportable quantities" should be used as a floor for determining whether an assessment should be carried out for a particular discharge or release. These comments pointed out, however, that the fact that a reportable quantity has been discharged or released should not automatically trigger an assessment, but that there should also be some evidence of actual harm to a resource before beginning any assessment.

The Department notes that section 103 (a) and (b) of CERCLA requires that persons in charge of a vessel or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQ's) must immediately notify the National Response Center of the release. The Environmental Protection Agency has emphasized (51 FR 34534) that such a hazardous substance release notification is merely a trigger for informing the government of a release so that the need for a Federal removal or remedial action can be evaluated by the appropriate Federal personnel, and any necessary action undertaken in a timely fashion. Furthermore, hazardous substances for which RQ's have been established are not inclusive of all substances covered by section 101(14) of CERCLA. The release of a hazardous substance at or below a specified RQ level may, in some site-specific instances, result in the NRDAM/CME predicting injuries to natural resources. The Department notes, however, that reportable quantities may be a useful guideline for trustees in making preassessment screen determinations, but correlation with injury is not direct enough to use as an absolute rule.

Injury due to mortality or fishing area closures

One comment expressed concern that the criterion found in § 11.33(a)(1)(vii) of the proposed rule [now (b)(1) (vi) and (vii)] that "the estimated injury to biological resources is expected to be primarily due to mortality or to closure of a fishing area," is too broad and should be clarified and explained as to what exactly is covered by this criterion.

The Department does not believe that the criterion is too broad, but does agree that clarification is necessary. Also, the closure criterion has been separated from the mortality criterion and is now found in § 11.33(b)(1)(vii). This criterion is consistent with the specific definitions of injuries to biological resources provided at § 11.62(f) of the final type B rule. In that final rule, injuries to biological resources include closure of a fishing area due either to the exceedance of action or tolerance levels established under the Food, Drug and Cosmetic Act, 21 U.S.C. 342, or exceedance of levels for which an appropriate State health agency has issued directions to limit or ban consumption of such organism. This criterion also recognizes loss of use resulting from closures that may have resulted due to response actions required by the discharge or release.

Mortality is also included as injury to the viability of biological resources under § 11.62(f). The criterion found in § 11.33(b)(1)(vi) of this type A rule recognizes injuries due to mortality, but excludes other sublethal injuries to biological resources such as disease, behavioral abnormality, cancer, or genetic mutations since adequate information on these sublethal injuries was not available for consideration in the NRDAM/CME. If in the judgment of the authorized official the primary injury is expected to be due to sublethal injuries, a type B assessment may be performed.

Underwater discharges or releases

One comment requested that underwater discharges or releases be assessed by the NRDAM/CME. Another comment stated that future versions of the NRDAM/CME should allow for assessments of non-point releases into the environment of a known area.

The Department notes that, as presently formulated, the NRDAM/CME does not model the transport and fate of underwater discharges or releases, nor does it model the transport and fate of non-point source releases but only point source discharges or releases occurring at or near the surface of the water. The Department notes that future modifications of the NRDAM/CME may be able to address underwater discharges or releases and/or non-point discharges or releases.

Other criteria

One comment stated that the Department should refine other criteria so that they are more understandable and more accurately reflect the capabilities of the computer model. The Department believes that the criteria for deciding between a type A or type B assessment, contained in § 11.33(b), do accurately reflect the capabilities of the NRDAM/CME. In addition, all criteria in this final rule were determined by examining the requirements of CERCLA and the limits of the NRDAM/CME. Based on this examination, the Department has added another new criterion. This new criterion, found at § 11.33(b)(1)(xii), is that the estimated injury to the biological resources due to the discharge or release is not expected to have been primarily due to exposure through the air pathway.

Potentially responsible party request for a type B assessment

Several comments agreed with the provision allowing, under certain conditions, the potentially responsible party the option to have a type B assessment performed instead of the type A. One comment stated, however, that the inverse should also be allowed, granting the potentially responsible party the option to choose a type A assessment over a type B assessment.

Some comments, however, noted that the selection of a type A or type B assessment will be out of the control of either party since a disagreement among the authorized official, the potentially responsible party, and the general public would force the choice of a type B assessment.

On the requirement that the potentially responsible party bear the costs of the assessment when requesting the type B assessment and not be allowed to go back to a type A assessment once the choice has been made to do a type B assessment, one comment stated that the language in the proposed rule and preamble should be more explicit and should be strengthened. Other comments, however, stated that requiring the potentially responsible party to advance the costs of the assessment before an assessment is begun would result in a delay and a loss of important evidence.

The Department does not agree that the potentially responsible party should have the option to choose a type A assessment over a type B assessment when the authorized official has determined that the conditions of § 11.33(b)(1) are not applicable. Because the trustee agency retains the statutory obligation for management and protection of the resources affected, the decision as to whether the criteria are met must rest with the authorized official. This final rule, however, requires that the potentially responsible party, as well as the public, have the opportunity to comment on the authorized official's decision before it is final. If the potentially responsible party believes the authorized official's decision is in error, the reasons and facts supporting that belief should be submitted to the authorized official for consideration and would become a part of the Report of Assessment.

The Department does not agree that the selection of a type A or type B assessment will be out of the control of either party. The rule does not require agreement on the decision to perform a type A or a type B assessment. The initial decision to perform a type A assessment is reserved to the authorized official subject to conformance with certain criteria. The option to require a type B assessment is reserved to the potentially responsible party, again subject to the conditions stipulated in the rule.

The Department believes that the proposed language is sufficiently explicit that, once a type B assessment is begun at the request of a potentially responsible party, the election is final, and a type A assessment cannot be performed instead of continuing the type B assessment.

The Department agrees that allowing for an unlimited period of time for the potentially responsible party to advance costs may result in undue delay and loss of necessary samples. Therefore, the Department has revised the language of § 11.33 to require that the request by the potentially responsible party to have a type B assessment performed contain written documentation of the reasons for the request and that funding be provided within an acceptable period agreed upon by the authorized official.

One comment pointed out that, if the potentially responsible party is liable for the assessment costs, those assessment costs should be under the control of that potentially responsible party. Another comment stated that there should be a cap, perhaps a percentage of the damage amount, on the allowable assessment costs for which a potentially responsible party is liable, with the trustee bearing the excess costs. Another comment agreed with the statement in the proposed rule that if no injury is found, no assessment costs will be charged to the potentially responsible party. This same comment asserted that, based on the statement in the type B rule that liability attaches only when an injury determination is made, a trustee can require a potentially responsible party to pay or advance assessment costs, as provided in § 11.33(b)(2) of the proposed rule, only when there has been confirmation of exposure and determination of injury attributable to that potentially responsible party.

The Department does not agree that the assessment costs should be under the control of the potentially responsible party. The authorized official always retains ultimate responsibility for any assessment and therefore retains final decisionmaking on all aspects of the assessment. Allowable costs of an assessment are determined by the reasonable cost and cost-effective criteria contained in the general assessment procedures. The Department agrees that the trustee cannot force the potentially responsible party to pay or advance assessment costs without first prevailing in a court action pursuant to CERCLA or the CWA. The type A and the type B assessment procedures are part of an administrative process intended to avoid the need for litigation whenever possible. If litigation is necessary, the rule sets forth the procedures that must be followed for the trustee to receive the statutory rebuttable presumption. The option that the potentially responsible party advance assessment costs for a type B assessment, rather than the type A assessment selected by the authorized official, is an attempt to resolve serious challenges to the results of the type A assessment prior to judicial action. The potentially responsible party does not have to exercise the option for a type B assessment. The potentially responsible party can choose to challenge the results of the type A assessment in court in a damage action initiated by the trustee agency. If the potentially responsible party advances the costs to perform the confirmation of exposure and the Injury Determination phases of a type B assessment and no injury is found, no damage action can be brought by the trustee. The Department does not believe that a cap on assessment costs is either appropriate or necessary, as the Assessment Plan is to be developed using the cost-effective and reasonable cost criteria and the potentially responsible party is provided the opportunity to comment on the contents of the Assessment Plan developed by the authorized official.

Authorized official's determination

Several comments stated that the trustee should have more flexibility in the decision as to whether to use a type A or type B assessment procedure. One comment suggested that the rule should limit the right of the potentially responsible party to require the use of a type B procedure to those situations where there is evidence or a reasonable basis to believe that the type A procedure would substantially overstate or understate certain categories of damages. Similarly, where the trustee has evidence or a reasonable basis to believe that use of the type A procedure would substantially overstate or understate important variables or yield substantially incorrect results, the trustee should also have the discretion to use a type B procedure. The trustee should have the ultimate decision because the requirement to undertake or oversee a lengthy type B assessment for small spills could divert trustees from more pressing responsibilities.

Another comment suggested that allowing the potentially responsible party to request the more detailed type

B assessment appears to give the potentially responsible party the right to determine which procedure will result in a lesser award and to select that procedure. The comment stated that this option should not be left to the potentially responsible party.

Another comment stated that the authorized official should have the discretion to use the type B procedures, even if the specified conditions for use of a type A procedure exist, if in the judgment of the official the type B is more appropriate. This, the comment continued, is particularly important because, as the preamble to the proposed rule recognized, the type B procedures are likely to lead to a much more accurate assessment of natural resource damages than the simplified type A procedure.

Another comment stated that the authorized official *must* select the type B procedure if the conditions assumed in the type A procedures are not met and that the use of the term "may" in the preamble to the proposed rule conveyed the opposite of what was intended. Finally, another comment stated that the requirement in proposed § 11.33(a)(2) [now (b)(2)] that the authorized official *must* select the type A procedure unless certain criteria are met is unduly inflexible. The word "must" should be changed to "should" or "may" to allow the authorized official the discretion to choose the best assessment procedure, based on his professional judgment.

The Department agrees that, because of the potential impact on the trustee agency if a type B assessment is requested, the potentially responsible party should provide a reasoned explanation for his request. The language of § 11.33(b)(2) has been revised accordingly to incorporate the requirement that a statement of the reasons for the request must accompany the request. However, because of the significant added cost to perform a type B procedure, the criteria for the authorized official to decide to use a type B procedure where a type A procedure could be used, should be more stringent. A type B procedure should be used in place of a type A procedure only where there is a significant increase in net benefits to the public, i.e., when the net benefits of performing a type B assessment are greater than the net benefits of performing a type A assessment. Even though the potentially responsible party is statutorily liable for the assessment costs of a type B procedure, public funds will generally be used to initially pay for the assessment and for potential litigation costs that must be incurred to recover the assessment costs. Every time an assessment is made more expensive than it needs to be to accomplish the purposes of CERCLA and the CWA, society ultimately pays the cost, either through tax dollars or through the market place. Therefore, every effort is made to encourage the use of type A procedures unless it can be shown that the criteria for applying the NRDAM/CME are not met for the incident.

The Department notes that the decision to use a type A or type B procedure is not a question of which process will result in the "lesser award." A type B procedure will almost always be more costly to the potentially responsible party because liability includes both the costs of performing the assessment as well as the damages determined. In contrast, the costs of the performance of a type A assessment should be minimal. The purpose for allowing the potentially responsible party the option of selecting a type B procedure is to allow the potentially responsible party against whom a potential damage claim may be asserted the opportunity to challenge the potential results of the NRDAM/CME by use of the more incident-specific type B procedures.

Public review and comment

Several comments felt that the public should be given the opportunity to request that the authorized official conduct a type B assessment. Others suggested that the public at least be given the opportunity to comment upon the choice between a type A or a type B assessment, and that the public should be allowed to participate in the actual assessment. Another comment suggested that the public be allowed to comment on the incident-specific parameter values that the authorized official will use as inputs into the NRDAM/CME. Finally, one comment stated that the public be allowed to review the draft assessment before it is finalized.

The Department agrees that public input in the Assessment Plan phase of the assessment is important and notes that provisions in the final rule published on August 1, 1986, do provide for public input regarding the decision to perform either a type A or a type B assessment. Section 11.32(c) requires that the Assessment Plan be made available for public review and comment before any methodologies contained in the Plan are performed. The selection of a type A or type B assessment and the data inputs to the NRDAM/CME are both sections of the Plan that must be made available for public review.

Allowing the potentially responsible party to conduct the assessment

Several comments felt there may be a conflict of interest in allowing the potentially responsible party to conduct the assessment. These comments stressed the need for the authorized official to have the opportunity to review and possibly reject the assessments before they are finalized, and to have the right to provide direction and guidance to the potentially responsible party. One comment strenuously objected to allowing the potentially responsible party to conduct any part of the assessment.

The Department discussed this issue at length in the response to comments on the type B rule at 51 FR 27674. To summarize here, the authorized official has the discretion as to whether to allow potentially responsible party participation. If potentially responsible party participation is allowed, it is *only* at the direction and monitoring of the authorized official. All final decisions regarding the assessment procedure are to be made by the authorized official.

Allowing a third party to conduct the assessment

One comment suggested that, in a situation where the potentially responsible party requests that a type B assessment be conducted, the authorized officials have the option to allow a third party, for instance, a commercial firm under the supervision of the authorized official, to conduct the assessment. The comment noted that this option would avoid forcing the authorized official to divert his own personnel to an assessment requested by the potentially responsible party.

The Department notes that the type A and type B assessment regulations do not in any manner limit or restrict the authority of a trustee agency to contract for professional services to assist in fulfilling its responsibilities.

Multiple potentially responsible parties

Some comments suggested that the rule should provide for cases where there is more than one potentially responsible party. In such cases, one comment suggested that where only one of several potentially responsible parties requests a type B assessment to be performed, the one requesting a type B assessment would bear the costs of the assessment. Another comment suggested that, in the case of a disagreement among multiple potentially responsible parties, the decision as to

the type of assessment to be performed should lie with the authorized official.

The Department agrees that when multiple potentially responsible parties do not agree on whether a type B assessment should be requested, the authorized official has the authority to make the final decision on the type of assessment to be performed, even if one of the potentially responsible parties requests a type B assessment and agrees to advance the assessment costs. The final decision must lie with the authorized official in this situation because the circumstances could be so varied that it would be inappropriate to suggest a general rule. The final rule has been revised to explicitly include this provision in § 11.33(b)(3). The Department wishes to emphasize, however, that within the administrative process of the rule, neither an authorized official nor a potentially responsible party could force an unwilling potentially responsible party to advance assessment costs.

Section 11.41 Coastal and Marine Environments.

Expansion of the type A rule

Almost all of the comments received on the proposed type A rule expressed the view that the rule be expanded beyond the coastal and marine environments. Several comments stated that limiting the type A rule to the coastal and marine environnent is in violation of the legislative mandate of CERCLA, the legislative history of the Act, and the court order entered in the case of *New Jersey* v. *Ruckelshaus*. Some comments stated that the expansion of the NRDAM/CME into other areas and the development of other type A procedures is mandatory, not discretionary.

Several of the comments had suggestions for future type A procedures. These comments stated that the NRDAM/CME should be expanded, or additional procedures developed, to cover inland freshwaters (especially the Great Lakes), wetlands, air, and land. Some of these comments noted that the NRDAM/CME, as proposed, does not cover Superfund sites. Others pointed out that, of the discharges and releases that occur every year, the NRDAM/CME would not cover the majority of these incidents. One comment stressed that all natural resources covered by CERCLA and the Clean Water Act should be covered by a type A procedure.

One comment suggested that the expansion of the proposed NRDAM/CME, or the development of other type A procedures, could be done through the biennial review process. Almost all of these comments stated that some statement is needed in the final rule showing a commitment by the Department to include other environments and resources in future type A procedures.

The Department responds that promulgation of this type A rule, applicable only to coastal and marine environments, is not in violation of the consent order in *New Jersey* v. *Ruckelshaus* or CERCLA. In discussions with parties to the litigation and in the affidavit filed on behalf of the Department in the *New Jersey* v. *Ruckelshaus* litigation, it was made clear that the schedule proposed by the Department, agreed to by the plaintiffs, and finally ordered by the court, included simplified type A assessment procedures only for oil spills in coastal environments. Paragraph #12 of the Affidavit of Keith Eastin, then Director of the CERCLA 301 Project, stated, in part:

> The Department intends to promulgate regulations to address small oil spills in aquatic environments, which historically have accounted for almost two-thirds of all incidents, within the time period set out in paragraph number 14.

The Department, in fact, has gone beyond its original intent to include over four hundred hazardous substances in the type A rule as well as petroleum products.

The Department also has not violated section 301(c)(2) of CERCLA. The Department agrees that CERCLA contemplates that some assessment procedure be available for all natural resource injuries covered by CERCLA or the CWA. The promulgation of the final type B rule satisfied that intent. The Department believes that simplified standard assessment procedures are a significant benefit to trustee agencies and agrees with the goal of having simplified standardized procedures available for all discharges or releases potentially affecting natural resources. Development of standardized type A procedures, however, is much more time-consuming and costly than were the individual incident-specific type B procedures.

The Department determined that lookup tables or penalty lists were not the best available procedures, consequently the Department developed a state-of-the-art computer model that attempts to account for the most important contributing factors resulting in resource injuries, while still retaining a procedure that is simple for the authorized officials. As can be seen from the length of this preamble, the NRDAM/CME is complex, and has elicited numerous and varied comments. The Department believes that it would be unwise to make a significant commitment to expand the NRDAM/CME until the affected Federal and State trustee agencies have had the opportunity to apply the NRDAM/CME in a variety of real-life situations. The Department fully supports the concept of type A procedures and will move ahead with ideas to improve and expand the NRDAM/CME. It would be premature, however, to propose any specific expansion of the NRDAM/CME or develop additional procedures until more experience is gained and until any potential legal challenges to the final rule are resolved.

Section 11.41(a) NRDAM/CME.

General

Several comments questioned the fact that the Department did not explicitly state in the proposed rule that the NRDAM/CME and background documents have regulatory status, or whether revisions to this NRDAM/CME would have to be carried out through a further rulemaking.

The Department has made it explicit in this final rule that the NRDAM/CME as contained in this final rule is regulatory in nature. Any changes to the NRDAM/CME, or the data bases included in the NRDAM/CME, can only be implemented through a notice and comment rulemaking. To obtain the rebuttable presumption provided for in CERCLA for type A assessments in the coastal and marine environments, the trustee must use the type A NRDAM/CME procedure. The NRDAM/CME and the NRDAM/CME technical document have both been incorporated by reference in this rule.

Validation

Almost all of the comments received on the proposed rule spoke of the need to validate the NRDAM/CME. Many expressed the view that, since the NRDAM/CME is an unknown and a "black box," any confidence in its results can only be achieved if the NRDAM/CME has been subjected to standard scientific calibration and validation procedures. Some comments pointed out that efforts to assure the accuracy of the NRDAM/CME are necessary if this NRDAM/CME is to be considered the "best available" procedure called for by section 301(c) of CERCLA. Others argued that to be consistent with common law damage principles, the NRDAM/CME must not result in awards that are speculative or too remote from reality, therefore, any

erroneous data or assumptions must be identified and corrected. These comments pointed out that with such a multi-coupled NRDAM/CME even small corrections to certain variables could have significant impacts on the final numbers.

The Department agrees that validation is an important factor in establishing the extent to which the NRDAM/CME reflects "actual" occurrences. To this end, the Department has conducted an extensive search of available literature to obtain documentation of field case studies that have been performed on accidental or controlled incidents. The Department notes that the method frequently used to validate a predictive model is to compare the results obtained through the use of the model with those of carefully documented case studies. Using this method for the NRDAM/CME would require that a comparison be made between the detailed results of case studies of incidents in the coastal and marine environments and the results of the physical fates, biological effects, and economic damages submodels of the NRDAM/CME. This method is called restrospective validation. The principal conclusion of the Department's literature search is that it is not possible to retrospectively validate the NRDAM/CME because of many major problems, including those discussed below.

Relatively few discharges or releases have been comprehensively studied in the field. Of those that have been studied, relatively few have had suitable control areas. Moreover, those that have been most heavily researched involve major incidents of high visibility, not the minor incidents that the NRDAM/CME is meant to address. Consequently, the universe of potential studies is very small.

Very few field studies of discharges or releases have involved a systematic damage assessment within a framework that specifically integrates physical fates, biological effects, and economic damages as does the NRDAM/CME. Therefore, it is difficult, if not impossible, to find studies that jointly look at minor discharges or releases and the integrated components of the NRDAM/CME.

Those studies that have included an economic assessment of damages generally have been limited by the lack of biological data. In addition, the economic concepts used in these analyses differ considerably from those used in the NRDAM/CME. Typically, these studies are an attempt to determine the total social cost of a discharge or release, rather than the categories of damages covered under CERCLA.

The chance nature of discharges or releases and the logistical problems inherent in initiating field research programs after an incident has occurred have presented researchers with major sampling and quantification problems, for example, the difficulty of launching a research program before the evidence is lost by dispersion, scavengers, or other natural processes, as described in a recent National Research Council report (National Research Council, 1985):

> Scientific studies of tanker spills present several problems for the serious scientist—awesome difficulties in field sampling, and readiness of personnel and equipment. Spills are not anticipated, and in the past, personnel and equipment have seldom been readily available. Also, most spills occur in areas that have not been studied previously, and adequate controls are rare. Spills frequently occur in weather conditions that make sampling difficult or impossible. These problems are compounded in offshore spills, where sampling becomes much more difficult, background data are less available, and the expense of large ship operations is difficult to finance on short notice (p. 549).

The Department notes that the inability to retrospectively validate the NRDAM/CME is also consistent with the legislative history of CERCLA. The legislative history recognized the need for development of standardized assessment procedures. Implicit in this recognition was the fact that previous studies were deficient in many of the aspects discussed above.

Due to the inherent problems in the studies discussed above, it is difficult to determine whether the results of any past case studies are "correct" and, therefore, the appropriate standard against which to compare the NRDAM/CME. Thus, even if more studies were available, the use of the studies in retrospective validation would be suspect.

The Department points out that there is an alternative to retrospective case study validation. This alternative involves a careful documentation and checking of the component parts of the NRDAM/CME. The Department has carefully examined the physical fates, biological effects, and economic damages submodels. The individual components of the final NRDAM/CME were checked to: review all basic algorithms for scientific accuracy and precision; review the coding of all routines to ensure that the source code follows the intent of the algorithm; perform sensitivity analyses on coded algorithms to ensure numerically robust coding procedures; and evaluate the source code by moving all source code and data to a computer different from the one the NRDAM/CME was developed on and running extensive side-by-side tests to check for potential numerical estimation and data base retrieval problems.

Because of careful review of the NRDAM/CME, the Department does not believe that the NRDAM/CME is a "black box." The many comments received on the NRDAM/CME and the NRDAM/CME technical document indicate that the general public has had ample opportunity to evaluate the NRDAM/CME and, in fact, has done so. Many suggestions made by the public have been incorporated, where possible, in this final version of the NRDAM/CME and all linkages have been exhaustively checked and rechecked. While it is true that small changes in parameter values can change the value of the estimated loss in biological resources and consequent economic valuation, the NRDAM/CME has gone through sensitivity analyses to isolate these values and reexamine those parameters that have a major impact.

Some of the comments stated that certain values in the NRDAM/CME appear to be gross underestimates of true damage and are stunningly low in many cases. These comments felt that the NRDAM/CME is based on too many assumptions to yield results that are sufficiently representative of actual effects to be of practical use, that it must be shown that the NRDAM/CME will generate results that are correlated with actual results. It was stated by some that there is a need for an objective confirmation of resource impacts and comprehensive validation to show that the proposed type A procedures are not purely speculative. Other comments urged that the complete documentation to support such things as parameter selection, derivation of operational equations, and accuracy of data bases must be available for public review and comment.

The Department does not agree that the results of the NRDAM/CME are unrealistic. The mathematical formulations, concepts, assumptions, and data bases employed within the NRDAM/CME have been drawn from the published literature. This information has been widely used in other instances for purposes of resource management and regulatory and conservation programs. The application of this technical literature in modeling environmental fates, biological effects, or resource economics has been frequently carried out and also published in the technical literature. Thus, the general modeling approach

within the respective submodels of the NRDAM/CME is considered to be technically sound. The results of the NRDAM/CME are not unrealistic in that the results of repeated application of the NRDAM/CME parallel expected results, i.e., that over a wide range of substances, small spills generate small losses and that this relationship is, in many cases, nonlinear. Highly productive ecological systems generated high losses and ecological systems with low productivity showed a correspondingly low loss. While some comments did suggest that the NRDAM/CME undervalued injuries to natural resources, most of these comments addressed the standard to be used to determine value, for example, willingness to pay versus willingness to accept compensation. These valuation criteria are addressed elsewhere in this section of the preamble.

The Department agrees that complete documentation of the NRDAM/CME is required. To this end, the NRDAM/CME technical document has been expanded, based on comments received, to further document the equations and parameters selected. In addition, many changes have been made in the data bases used by the NRDAM/CME.

Some comments suggested that the Department investigate alternative means of testing the NRDAM/CME. One suggested that the Department could assign groups of experts for each area of expertise within the NRDAM/CME. Another stated that a series of calibration and validation exercises could gain substantial insights as to the accuracy and usefulness of the NRDAM/CME. One other comment suggested that the predictive accuracy of the NRDAM/CME could be tested and assumptions within the NRDAM/CME verified for consistency one with the other. Another comment stated that there should be a rigorous review of the underlying assumptions of the NRDAM/CME and an extensive exercise of the program to uncover any questionable approaches and data elements. One comment stated that interested governmental agencies should provide a forum in which the NRDAM/CME might be subjected to constructive criticism in order to highlight any weaknesses and to identify better methods of addressing the various aspects treated by the NRDAM/CME. Another suggestion from some of the comments was that the Department seek examples of incidents involving known biological harms that could be run on the NRDAM/CME. These results could then be compared to the actual damage awards from these incidents. In this way, the NRDAM/CME could be refined and validated on actual case studies where field data has been used in the NRDAM/CME. Therefore, the results would take cognizance of real life situations.

The Department notes that the NRDAM/CME was developed with the aid of an outside panel of experts. This panel included expertise in each area of the NRDAM/CME. The experts' help in developing the NRDAM/CME was extensive. In performing the sensitivity analyses, the Department did gain insight to the accuracy and usefulness of the NRDAM/CME and this insight has resulted in changes in the NRDAM/CME. For example, the NRDAM/CME now asks for wind speed and air temperature for intertidal applications. Given the wind speed and air temperature, the NRDAM/CME now estimates the area affected in an intertidal application for all substances.

The Department believes that the extensive public review and comments received have, in fact, led to a "rigorous review of the underlying assumptions within the model." In addition, the extensive work performed in addressing the comments received on the proposed NRDAM/CME has provided a consistency check on the parameters and assumptions used in the final NRDAM/CME.

The Department acknowledges that other Federal agencies have, in fact, been interested in the development and use of the NRDAM/CME. The Department sent advance copies of the proposed NRDAM/CME to several Federal agencies. Comments were received from these agencies identifying weaknesses in the proposed NRDAM/CME and suggesting alternative methods of addressing aspects treated by the proposed NRDAM/CME. These comments have been incorporated, where possible, in the final NRDAM/CME.

The Department agrees that one of the best ways to validate the NRDAM/CME would be to compare the results of the NRDAM/CME to those of actual spills. However, given the difficulties in retrospective validation of the NRDAM/CME, as explained in the discussion on validation, this comparison was not possible.

Another comment stated that the Department must begin planning now for the statutorily-required two-year review period to provide the appropriate occasion to collect information with which to validate the NRDAM/CME. Others stated that the Department must organize the validation studies for future uses of the NRDAM/CME, that the testing must be planned prior to the events or the effort to collect information will be untimely and valuable data will be lost. These comments pointed out that there is, in the proposed rule, no provision for using the NRDAM/CME along with conventional methods, so that no data will be obtained on the NRDAM/CME's accuracy in the future. These comments felt that the Department should propose a protocol for collecting and evaluating validation data during future use of the NRDAM/CME, and organize some process now to conduct or supervise such validation studies.

The Department agrees that planning for continued review and prospective validation of the NRDAM/CME should be done. The Department is currently considering ways to use the time between the promulgation of this final rule and the two-year review period for such purposes. The Department has not at this time determined any specific protocols for prospective validation studies or information collection. However, if any information is submitted it should consider the physical fates, biological effects, and economic damages components of a natural resource damage assessment. When the Department determines these protocols, they may become the subject of a future **Federal Register** notice.

Updating

Many of the comments received stated that the data bases must be regularly updated as new information becomes available, and that techniques used in the NRDAM/CME should be updated as better techniques are developed. This updating, as stated by the comment, should help to improve the NRDAM/CME's accuracy and usefulness. For example, one comment stated that a determined effort must be made by the Department to collect toxicity data, an effort that could lead to a substantially better NRDAM/CME. Yet another comment was concerned that the rule is not clear as to whether the economic data bases are to be updated, noting that the values based on a 3-year basis may be completely out of date when assessing damages in future years, pointing out that new techniques are being developed to value natural resources. This same comment also suggested that the proposed rule be amended, at § 11.41(g)(1)(iii), to allow for updated values to be substituted into the economic data base.

Several comments stated that the Department, in the proposed rule, made no commitment to the data gathering effort necessary to carry out such an updating process and urged that such a

commitment should accompany the adoption of the final type A procedures. Others pointed out that the Department should formalize and disclose its anticipated review procedures so that there will be some guidance to the information-collection for the future.

As suggested by those comments, the Department has collected additional toxicity data that is discussed in greater detail in subsequent responses to comments. The Department considers the information now contained in the NRDAM/CME data bases to represent the best currently available information. New advances in data collection and assessment technologies continue to be made. Biological resources are not static and the economic values of these resources change in response to market supply and demand. The Department recognizes that the data bases will have to be updated and refined as new information is developed and becomes available to ensure that the NRDAM/CME continues to represent "best available" information. The Department, as required by section 301(c)(3) of CERCLA, intends to review and revise, as appropriate, the NRDAM/CME every two years.

The Department strongly encourages the active participation and support of Federal and State agencies, institutions, and industries for continued collection of specific data that will be necessary to revise and update the NRDAM/CME. This data should be sent to the address listed in the front of this preamble. As noted by the comments, toxicity data, species-specific standing stock biomass, commercial and recreational price indices by species, and beach visitation and beach use values are among the types of data the Department will require. However, the Department declines, at this time, to specify any "standardized" type of reporting requirements. As information is received, the Department may in the future request information in some specified format.

Use of the NRDAM/CME

In general, many of the comments expressed satisfaction with the implementation and operation of the proposed NRDAM/CME and felt that, overall, it was easy to use. One comment, however, suggested that the Department should rewrite the instructions that accompany the program disks, making them easier to follow, and should consider conducting workshops on the operation of the NRDAM/CME prior to publication of the final rule. Another comment requested that the authorized official have the ability to make the NRDAM/CME more "user friendly." Several comments suggested specific ways to make the use of the NRDAM/CME easier for the authorized official.

The Department is pleased that comments were generally supportive as to the implementation and operation of the NRDAM/CME as proposed. The Department has made additional revisions to further clarify and simplify the use of the NRDAM/CME and the NRDAM/CME technical document. The Department has not allowed for modifications to be made by the authorized official in the NRDAM/CME to further enhance its "user friendly" qualities. The Department has made numerous changes to the NRDAM/CME to enhance its user friendliness. These changes are documented in the NRDAM/CME technical document. The Department notes that the court-imposed deadlines for submitting a final type A rule to the **Federal Register** preclude conducting formal training workshops prior to the finalization of the NRDAM/CME.

One comment suggested that the NRDAM/CME technical document should give some impression of error, for example, that 10 is between 9.9 and 10.1 or between 5 and 15. One suggested that the report accompanying the NRDAM/CME should have an abstract or some other concise statement in its introduction that lists the major assumptions and limitations of the NRDAM/CME and that the report should be annotated with references to the various subparts of the NRDAM/CME to help the authorized official understand the stages of the assessment. Another comment suggested that the document should identify those situations where significant simplification could lead to error.

The Department notes that the NRDAM/CME technical document contains the important assumptions used in the NRDAM/CME, and the interested reader is referred to that document for a discussion of the significance of the simplifications required to develop the NRDAM/CME. The Department agrees that in some cases a measure of the variability of a parameter, for example the variance, is useful. However, it would be an impossible task to determine this variability for all parameters.

One comment felt that the accompanying document attempts to convey that the NRDAM/CME has every conceivable data point necessary to validly determine damage, but that this cannot possibly be true. The Department did not intend to convey the impression that all possible information needed to compute damages is contained in the NRDAM/CME. Some incident-specific information is required. In addition, the Department agrees that, as with any modeling exercise, many approximations have been made in order to make the procedures tractable. However, the NRDAM/CME does contain the chemical, biological, and economic data bases to determine many types of damages resulting from a large number of discharges and releases in coastal and marine environments.

One comment stated that the instruction during the NRDAM/CME run for an intertidal incident that "Type 1 if substance spilled is an oil, or is oil-like" is ambiguous and is probably unanswerable by many trustees and potentially responsible parties. This comment suggested that the Department should build this characteristic into the NRDAM/CME for each substance in the chemical data base, so that the question need not be answered.

The Department notes that the question of "oil or oil-like" has been deleted from the NRDAM/CME, since the area affected for all discharges or releases in the intertidal area are now calculated by the NRDAM/CME.

Other comments asked that the format of the printed output, especially the graphic output, be revised to make it easier to interpret. One comment suggested that the NRDAM/CME use a tabular format for the regional concentration thresholds. Another suggestion was that the tabular output for short-term and long-term losses of the biological resources would be easier to read if the NRDAM/CME could list the name of the species category instead of category number. The Department agrees with these comments and notes that these and other changes have been made to clarify the output of the NRDAM/CME.

Other comments suggested that the NRDAM/CME be modified to store intermediate submodel outputs in a data file, similar to the file for the economic data, that can be retrieved or printed out later for subsequent review. Another comment was that a summary should be presented of more important data so that the authorized official could give the information a cursory review to see if the results are on their face reasonable. One of the areas in which such a summary would be useful would be with the mean concentrations used in the NRDAM/CME. With such information presented to the authorized official, it would be possible to judge if the concentrations and volumes combine to give a reasonable mass.

The Department notes that intermediate results are now available, as described in Appendix A of the revised NRDAM/CME technical document. The summary of results will be dependent upon which output is of interest to the authorized official. For example, the authorized official could request an output of the information passed from the physical fates submodel to the biological effects submodel, or from the biological effects submodel to the economic damages submodel.

Finally, some comments asked that the Department indicate the average run times that can be expected for various kinds of circumstances because of the fact that some runs, especially for particularly toxic chemicals, continue to take a significant amount of time to complete.

The Department is unable to give any guidance on the average running time of any particular substance discharged or released. These times will vary with the environmental parameters used and the size of the study area. In addition, some substances may take over an hour to run in almost all environments or study areas; these running times could not be shortened without considerable inconvenience to the authorized official. The use of a mainframe computer would significantly decrease the time required for each application of the NRDAM/CME; however, requiring the use of a mainframe computer would substantially increase the cost of using this procedure; and mainframe computers may not be available or accessible to all potentially responsible parties, authorized officials, or the general public.

Source code

Several comments raised the issue of the availability and accuracy of the source code for the NRDAM/CME. One comment stated that the NRDAM/CME as presented in the source code and in Appendix H of the accompanying report contains numerous errors, ranging from coding errors to errors in units of key parameters, algebraic errors, and errors in manipulating the equations used in the various submodels. Another comment raised questions about practices used in the program, for example, that entire subroutines are devoted to assignment of fixed values to variables, rather than using block data or data statements. Finally, one comment suggested that the Department should distribute copies of the source code to trustees upon request.

The Department acknowledges and appreciates the work done by comments in reviewing the source code. The errors pointed out by the comments have been corrected. In addition, this final code has been verified and a hard copy is included as Appendix H of the NRDAM/CME technical document. Finally, the Department will make the final source code available on diskettes to the public upon request and payment of a reasonable duplication fee. Requests for the final source code on diskettes should be made in writing to the address given at the front of this preamble.

Averages

Some comments questioned the NRDAM/CME's use of average values and complained that no explanation was given as to how specific values were chosen from among ranges of data values. These comments pointed out that many of the ranges are extremely large and may reflect studies that have not been validated by peer review. They felt that the Department needs a more thorough explanation for the choice of particular data inputs from ranges of values. One comment stated that there has been shown no basis to believe that data based on average values from studies conducted elsewhere can be applied with reasonable accuracy to an actual event. Finally, one comment stated that the use of average values does not necessarily make sense for chemical concentrations or biological parameters, as it might for dollar amounts.

The Department notes that the average values used in the data bases are explained in the NRDAM/CME technical document. The Department believes that this document adequately explains the derivation of the averages and gives the references for particular parameter values. The interested reader is referred to this discussion in the chapters on the physical fates, biological effects, and economic damages submodels, as well as the discussion of the data bases in Volume II of the NRDAM/CME technical document. The Department believes that the use of averages is justified in a type A procedure. Type A procedures are to be simplified assessments using minimal field observations. As such, average values are required. This is in contrast to the type B procedures where extensive incident-specific analyses and data collection may be required.

Section 11.41(b) Definitions.

"Affected area"

The definition of the term "affected area" was the subject of several comments received on the proposed rule. The comments indicated confusion as to the interpretation and application of the concept, as well as objections to the feasibility of making the determination for intertidal areas.

The Department agrees that the original definition was difficult to interpret and apply and, therefore, has deleted the entire concept from this final rule. Injuries to intertidal areas are now determined by the NRDAM/CME.

"Biomass"

One comment noted that "biomass" will vary greatly depending upon the situation and location. The Department agrees that biomass varies depending on situation and location. The NRDAM/CME incorporates this variability in its biological data base. Estimates of biomass vary by province, bottom type, estuarine versus marine environment, intertidal versus subtidal area, and by season of the year.

"Closure of a beach"

Several comments stated that recovery for the closure of a beach should be allowed when authorized by any official, including a local, regional, or county official. Other comments suggested that damages be assessed any time an oil or a hazardous substance comes into contact with a beach, regardless of whether the beach is closed. Finally, others urged the Department to clarify that only public beaches were covered in the regulations, that no injuries to private beaches are contemplated by the type A assessment.

Because Federal and State agencies are acting as trustees under CERCLA, the Department believes that these agencies are the proper level for determining that a beach should be closed due to a discharge or release. Therefore, this provision has not been changed in the final rule. However, while the Federal or State agency must determine that a beach closure is warranted, this does not preclude the agency from accepting the recommendation of a local or regional agency when making this determination.

The Department disagrees that the mere presence of oil or a hazardous substance is sufficient to determine injury to a beach. As specified in the type B regulation, in order to assess damages an injury must first be determined. This concept is also implicit in the type A regulation. The Federal or State agency must make a determination that the beach has been injured to such an extent that it can no longer provide the recreational or other public services that were previously provided. Only under these circumstances can injury occur and therefore provide the basis for a determination of damages.

The Department agrees that only public beaches are covered under the natural resource damage provisions of CERCLA. The Department has changed the definition of "Closure of a beach," accordingly.

"Closure of a fishing area"

Some comments stated that compensation for the closure of a fishing area should be allowed for a closure called by agencies other than a health agency, such as the Coast Guard or some other agency for the purpose of cleanup.

The Department acknowledges that an appropriate Federal or State agency acting under the authorities provided by the National Contingency Plan may prohibit commercial and recreational fishing in a specified area in order to carry out response actions. The Department concurs that the definition of closure of a fishing area should not be limited to health agencies as stated in the proposed rule. Consequently, the word "health" has been deleted from the definition in this final rule.

"Estuarine environment"

One comment suggested that, since the "estuarine environment" is not covered by the type A assessment, the definition of "estuarine environment" should have a statement contained within it to clarify that this is an environment not covered by the rule. This same comment stated that the definition of "estuarine environment" should clarify whether inlet and bay coastlines are included within the definition.

The Department believes that this comment misinterpreted the definition of an estuarine environment in the proposed rule. Estuarine environments were included in the proposed rule and continue to be included in this final rule. The Department notes that the comment has correctly interpreted the definition of the estuarine environment, in that inlets and bays are included in this definition. The Department has not added these terms to the definition of the estuarine environment because to do so might create the impression that other areas would be excluded. All areas that meet the definition of the estuarine environment are included in this rule.

"Marine environment"

One comment stated that the definition of "marine environment" should be broadened to include all open ocean subject to United States resource jurisdiction, such as those of the Marine Mammal Protection Act, the Magnuson Fishery Conservation and Management Act (MFCMA), the Outer Continental Shelf Lands Act, the Endangered Species Act, and the Exclusive Economic Zone (EEZ) proclaimed by President Reagan.

The Department agrees that the marine environment should include the EEZ and has revised the definition accordingly. The areas covered by the other Acts mentioned in the comment are included to the extent they fall within the EEZ or the MFCMA. Resources in areas beyond these areas cannot be included because the data bases of the NRDAM/CME do not include those resources. The Department notes, however, that the definition is not intended to define the extent of trusteeship, but rather is intended to describe the area where the NRDAM/CME may appropriately be used to assess damages.

"Species category"

One comment stated that limiting the species grouping to twelve was improper for the broad areal extent of the provinces. The Department notes that the NRDAM/CME contains a biological data base (see Appendix B of the NRDAM/CME technical document) that contains more than 130 species of fish, invertebrates, birds, and mammals. Each of these species and their respective average standing stock biomass have been included in that data base consistent with province, season of year, bottom type, estuarine/marine systems, and tidal/subtidal conditions. These species have been grouped into thirteen categories in this final rule only to facilitate modeling the effects of the discharge or release on the ecological food web. The Department notes that twelve species categories were contained in the proposed rule. An additional species category has been added to the NRDAM/CME in this final rule that contains seabird species.

"Natural resources"

Several comments emphasized that the rule should clearly state that only public resources are covered by the rule; not resources located on private land. The Department agrees that the natural resource damage assessment provisions of CERCLA apply only to natural resources for which Federal or State agencies may act as trustees. As such, the definition of closure of a beach has been revised. In addition, § 11.40(a) of the final rule has been amended to specify that the rule applies only to damages determined by Federal or State agencies acting as trustees for natural resources.

Section 11.41(c) Coastal and Marine Environments—Assessment Plan.

Discharges or releases of multiple substances and mixtures

Many widely divergent comments were received on the issue of how multiple substances and mixtures should be addressed in the rule and how the NRDAM/CME should model incidents involving multiple substances and mixtures. One comment stated that the provisions in the proposed rule were too restrictive and would lead to serious underestimation of damages. Another comment stressed that allowing the assessment to be performed for only one substance is in defiance of both reason and law, and that all injuries must be considered. The comments noted that there may be cases where the individual substances contained in either a mixture or multiple substance incident will not create a problem whereas the combination of the individual substances might. The comments pointed out that, in some instances, mixtures or multiple substances can have either additive or synergistic toxic effects. In other instances, the substances may be antagonistic, resulting in a reduced toxic effect. Another comment noted that the substances may chemically react to produce a third substance more toxic than either of the original substances alone or in combination. Yet another comment identified that some substances can degrade in the environment and that the degradation product may be more toxic or less toxic than the original substance.

One comment recognized that consideration of such interactions within the rule or that modification of the NRDAM/CME to account for these interactions may be too detailed for a type A assessment, but that the Department should be aware of the limitations. Several comments stated that the projection of additive or synergistic effects within the NRDAM/CME would be speculative, and beyond the current state of scientific understanding. Modeling these effects would not reflect "best available" procedures and data.

Several comments provided suggestions on how to possibly accommodate modeling for multiple substances and mixtures within the rule. One comment suggested that the type A rule allow the NRDAM/CME to be run for each of the multiple substances and the substance demonstrating the larger damage amount be used as the basis of the type A assessment. Another suggested that the results for each

substance be summed to get a total damage amount. One comment felt that the authorized official should be allowed to apply the NRDAM/CME using the mass of a reaction product formed from the chemical reaction of multiple substances. Comments recognized that precautions would have to be taken to avoid double counting and to preclude cumulative damages for a single, multiple-substance incident.

Some comments spoke to issues in the current language of the proposed rule. One comment suggested that more guidance is needed within the rule on how to select the substance to be considered. Another asked that the Department clarify how the authorized official will pick one substance; for example, should both persistence and toxicity be considered in the choice among substances. And, one comment stated that the potentially responsible party should have an input into the choice of the substance to be considered.

In response to these comments, the Department is aware that multiple substances and mixtures released into the environment can lead to additive, synergistic, or antagonistic toxic effects. Also, chemical reactions of these substances are recognized as a possibility. The Department recognizes, however, the current limitations in the scientific understanding of and modeling for these factors. As a result, the NRDAM/CME does not account for possible additive, synergistic, or antagonistic toxic effects, nor does the NRDAM/CME consider the possible chemical reactions of mixtures and multiple substances. The Department is aware that research is currently underway that is directed towards investigating these factors and that efforts are being made to model these interactions. These efforts may, in the future, allow for updating the NRDAM/CME to also model additive, synergistic, and antagonistic toxic effects.

The Department does not allow in this final rule the latitude to combine multiple applications of the NRDAM/CME using each of the respective substances contained in a mixture or multiple substance incident. As pointed out by comments, the addition of multiple applications of the NRDAM/CME within the same study area would result in double counting. The Department also considers as inappropriate the application of the NRDAM/CME using the mass of a reaction product that could theoretically be produced from the chemical reaction of two or more substances.

In response to comment requests for more guidance on the selection of the substance to be assessed, the Department notes that persistence and toxicity are factors that may be of interest in the substance selection. Other factors, such as the mass of the substance discharged or released, solubility, and vapor pressure may also be important. The environmental conditions existing at the time of the incident can also influence the fate and effects of the substance. As a result, the Department believes that the substance selection must be incident-specific. The Department notes that the selection of the substance shall be documented by the authorized official in the Assessment Plan, therefore, the potentially responsible party, as well as the general public, will have the opportunity to comment on the choice of the substance to be considered.

Section 11.41(d) Coastal and Marine Environments—Injury Determination.

Causation in general

Several comments objected to the perceived lack of a causation requirement in the type A rule. The comments stated that CERCLA requires that there must be some link, some legal nexus, between the discharge or release and any harm to natural resources, that the discharge or release must be the proximate cause of any injury for which damages are assessed.

The Department agrees that CERCLA contains a causation requirement that the injury must "result from" the discharge or release and that this requirement is applicable to the type A rule. The Department disagrees, however, with the statement that the type A rule does not contain a causation requirement. The NRDAM/CME parallels the major phases of the type B procedure. The NRDAM/CME contains the information required to determine injury, specify the pathway through which injury occurred, quantify the effects of injury, and determine damages. In the type B rule, the causation requirement is satisfied by the pathway determination. The pathway determination is the key that links the injury to the discharge or release of a specific potentially responsible party. However, 11.63(a)(2) of the type B rule recognizes that transport and fate modeling in media such as air and water may be necessary in many situations to demonstrate the pathway.

The physical fates submodel models the pathway as allowed by § 11.63(a)(2). As in the type B procedure, the type A procedure requires development and review of the Assessment Plan. The potentially responsible party and the public are afforded the opportunity to comment on the data inputs that are to be used in the NRDAM/CME and on the results of the NRDAM/CME. Any errors in the inputs to the NRDAM/CME should be identified and resolved through this process.

Beach and fishing area closures

One comment stated that the lack of a causation requirement is particularly important with respect to valuing beach closings and fishing area closings. These closings are independent components of the NRDAM/CME and are not linked to the physical fates submodel. Thus, under the proposed NRDAM/CME, a closing of a beach or fishing area would result in natural resource damages being assessed to a potentially responsible party, regardless of whether the closing actually resulted from a discharge or release attributable to the potentially responsible party, or assuming the discharge or release was attributable to the potentially responsible party, the closing was necessary. This comment suggested that, to remedy this deficiency, the Department could simply state that no rebuttable presumption attaches to a trustee's estimate of losses attributed to beach or fishing area closings. Alternatively, the Department could provide that before a trustee is entitled to a rebuttable presumption for damages from beach or fishing area closings, he must: (1) Establish a causal link between the discharge or release and the closing; and (2) explicitly consider other relevant factors, including the availability of substitute beaches and fishing areas.

The Department agrees that some revision to the language of the proposed type A rule is needed to clarify the application of the causation requirement to beach and fishing area closures. The proposed rule did not make clear that to claim damages for a beach or fishing area closure the authorized official must demonstrate that the closure resulted from the discharge or release being assessed.

With respect to a beach closure, documentation supporting the determination of the need for the closure, the length of time the closure is necessary, and a determination that the closure resulted from the discharge or release being investigated, must be part of the Assessment Plan.

With respect to a fishing area closure, the final rule requires that the closure order come from a Federal or State agency with the authority to order the closure. It is assumed that any such closure order would be based either on the need to perform response actions or on sampling and analysis that show that

concentrations of the oil or hazardous substance discharged or released, in the fishing areas, exceed public health limits. As with the beach closure, documentation of the sampling and analysis, or other need for the closure, the length of time the closure is necessary, and a determination that the closure resulted from the discharge or release being investigated must be documented in the Assessment Plan.

Presumption of injury

One comment strongly endorsed the Department's approach of predicting the realistic fate and consequent effects of discharged or released substances and attaching economic values to these effects. The comment stated that an assessment methodology that was not founded on risk-based estimations of real resource effects, such as spill penalties or the like, would be incompatible with CERCLA.

Several other comments, however, objected to the type A methodology of measuring damages based on modeling presumptions, rather than measurement of actual incident-specific occurrences. One comment stated that the presumptive injury approach for type A assessments as proposed would effectively result in strict liability penalties. This approach, the comment continued, essentially removes the powerful tool of simplified assessments from consideration by the discharger and abridges the plan outlined by Congress for two assessment methods. This comment stated that what Congress intended for the type A procedures was an assessment procedure that could be used when there is obvious injury that can be evaluated by a visual inspection, considering volume and material discharged, and location, type, and size of area affected.

Other comments objected to the modeling presumption because, they stated, the type A rule presumes that injury automatically results when a spill occurs. Another comment expressed opposition to any "automatic" type A invoice accompanying each U.S. Coast Guard *Letter of Federal Interest* for all oil spills on water that are reportable to the National Response Center, regardless of the size of environmental impact of the incident.

The Department would like to correct the mistaken impression that the NRDAM/CME presumes injury and damages for every discharge or release. Damages determined by the NRDAM/CME, if any, are dependent upon the amount of the substance discharged or released, the physical environment in which the incident occurred, the interaction of that discharge or release with the biological resource base, and the presence or absence of any closures. One comment summarized numerous case runs where the NRDAM/CME indicated that no injury occurred from the discharge or release. The toxicity information contained in the data base was made available for review along with the proposed rule during the public comment period and extensive comments on the accuracy of the data base were received. The Department has made every effort to address all concerns with the information contained in the data base.

Also the type A assessment procedure is not intended to be used as an automatic penalty assessment. The authorized official must comply with the preassessment screen procedures and the development of the Assessment Plan as required by §§ 11.23 through 11.25 and 11.30 through 11.33. Therefore, the decision to perform an assessment, to use the type A procedure, and the data inputs for the NRDAM/CME are all subject to public and potentially responsible party notice and comment.

The type A rule does include a methodology that determines injury by use of a complex modeling program. The Department believes that Congress intended that some simplified assessment method be developed that could eliminate the need for a lengthy, costly assessment in every instance. The NRDAM/CME is the Department's best effort to implement that Congressional intent.

The Department declines to adopt a type A procedure that is merely a watered-down version of the type B procedure. If incident-specific measurements are to be part of the damage assessment, the Department does not believe that two standards for quality can be established. The Department determined that the type A procedure, although relying on the principal concepts of the type B rule, must offer an alternative simplified approach that constitutes a significant cost savings, while still determining damages in a manner that predicts actual injury and economic damages.

Confirmation of exposure

Several comments stated that the type A rule must contain a confirmation of exposure requirement to satisfy the causation requirement of CERCLA and to avoid becoming merely a penalty assessment. These comments stated that while the type A procedures are statutorily intended to require "minimal field observation," this language does not eliminate field observation, and confirmation of exposure or injury need not require large amounts of data. Another comment asserted that the irrebuttable presumption of exposure in the NRDAM/CME conflicts with the compensatory intent of CERCLA and impermissibly eliminates the requirement that the discharge or release cause the injury to the resource. The comment continued that the Department can correctly contend that, in such cases of doubt, the potentially responsible party has the option of paying for the use of the type B procedures. However, this undermines the utility of the type A procedures as a reasonably accurate and cost-effective means of assessing damage. Finally, the comment stated that the lack of the confirmation of exposure cannot be defended by the option of the type B procedures, since this is a basic legal requirement of determining that injury actually exists.

The Department does not believe that the type A rule should contain a confirmation of exposure. The confirmation of exposure was included in the type B rule as one of the screens in the step-by-step decisionmaking process leading to a complete Injury Determination phase. The confirmation of exposure does not satisfy the legal causation requirement. It does not constitute a determination that the injury definitions were met, and it does not demonstrate the pathway of exposure. All it does, and was intended to do, is to confirm that, in fact, the oil or hazardous substance did come into contact with at least one of the natural resources of concern to the trustee.

Therefore, the Department believes that to insert the confirmation of exposure into the type A rule with the indication that it satisfies the legal causation requirement would in fact weaken the causation requirement in the law. If the potentially responsible party believes that the presumption of exposure is incorrect, i.e., that the oil or hazardous substance did not come into contact with any of the resources assessed by the NRDAM/CME, the potentially responsible party can request that the type B procedure be performed. Although this will involve some additional cost on the part of the potentially responsible party, the Department believes that the cost is minimal when compared to the overall benefit in cost savings from wide-spread use of the type A procedure.

In addition, the Department emphasizes that the presumption of exposure contained in the physical fates submodel is not an irrebuttable presumption of exposure. The presumption is rebuttable in either or both the administrative notice and

comment process created by the rule, and in any subsequent judicial process.

Section 11.41(e) Coastal and Marine Environments—Quantification.

Multiple applications

One comment stated that, while the rule allows a second run of the NRDAM/CME if the substance migrates beyond the study area, there should also be a provision in the rule for a second run of the NRDAM/CME for migrations in the sediments.

The Department notes that the purpose of allowing certain types of multiple applications of the NRDAM/CME to be added together to derive a damage amount is to account for possible migration of the substance outside specific types of study areas. In order to determine the amount that migrated to a different study area, only that portion of the substance predicted in the NRDAM/CME to migrate is counted in the subsequent application of the NRDAM/CME. This precludes the use of that portion of the substance in the air, in the sediments, or lost through degradation. This procedure was selected because the NRDAM/CME treats that portion of the substance that migrates across the study area boundary as a new spill, which is concentrated and "respilled" for the purposes of the subsequent application of the NRDAM/CME. In order not to overestimate the magnitude of the subsequent application, that portion in the sediments is not added to the "respilled" quantity.

One comment stated that the definition of "study area" should be limited, with respect to oil discharges, to areas actually covered by an oil slick. Another comment questioned the practice of allowing a second run of the NRDAM/CME in those situations where a surface slick has moved outside the original study area. This comment noted that the mere presence of a surface slick does not conclusively prove the presence of toxic concentrations since, after a short period of time, all the soluble toxic compounds in oil will be dissipated. Therefore, the comment stated that the spread outside the original study area must not be considered to be additive.

The Department notes that the determination of whether repeated applications of the NRDAM/CME are additive when an oil slick crosses a study area boundary is dependent upon the boundary of the study area where migration occurred. If the boundary of the study area is an estuarine or marine environment boundary, province boundary, or a land boundary, and a surface slick exists when any substance crosses that boundary, the NRDAM/CME applications are, in fact, additive. However, if the boundary of the study area where migration took place is not one of the aforementioned boundaries, the authorized official should then enlarge the study area and reapply the NRDAM/CME. In this case, the initial and subsequent reapplication(s) of the NRDAM/CME are not additive.

In addition, the Department points out that damages to birds and fur seals can occur whether or not a slick contains soluble toxic compounds. Due to the potential injury to birds and marine mammals, and the requirements of the procedures implementing the NRDAM/CME, the definition of the study area has not been changed in this final rule.

Section 11.91 Post-Assessment Phase—Demand.

One comment suggested that some guidance is needed in the post-assessment phase for those situations where there is no identified responsible party. Another comment pointed out that the phrase "responsible party" should be changed to "potentially responsible party" since "responsible party" is a determination that can be made only by the court or by the party's admission. Also, this comment recommended the addition of the date of discovery of the loss, an element necessary to establish the validity of the claim.

The Department notes that, in those situations where there is no known potentially responsible party, the trustee should consult the Natural Resource Claims Procedures at 40 CFR Part 306. Neither this final rule nor the final type B rule includes procedures for the filing of claims against the Hazardous Substance Response Trust Fund (Superfund). Rules for that purpose, cited above, have been promulgated by the Environmental Protection Agency (EPA). It should be noted that the Superfund Amendments and Reauthorization Act of 1986 (SARA) deleted expenditures for natural resource damage and assessment claims from the Superfund. However, the language of CERCLA authorizing such claims was retained and amended by Section 111 of SARA. The Department will amend its final type B rule in the future in accordance with any action EPA may take with regard to its Natural Resource Claims Procedures. Also, the Department agrees that the phrase "potentially responsible party" is more accurate and has revised § 11.91(a) accordingly. The Department declines to include the date of discovery of the loss as part of the demand requirements. The date of discovery relates to the statute of limitations for bringing court actions and is therefore relevant only if court action is initiated.

Section 11.92 Post-Assessment Phase—Restoration Account.

One comment questioned the authority of the Department to require the responsible party to establish a fund into which the damage award would be placed. This comment pointed out that such a requirement would circumvent the Federal appropriations process and may be subject to abuse. The comment suggested, as an alternative, that the responsible party could pay such funds into the Hazardous Substance Response Trust Fund, with EPA developing a mechanism to ensure that such monies are available to the appropriate trustee for the purpose intended.

The Department believes that CERCLA does authorize the restriction. However, if there was any argument as to that interpretation, the Superfund Amendments and Reauthorization Act of 1986 (SARA) explicitly amended section 107(f)(1) to provide that:

> Sums recovered by the United States Government as trustee under this subsection [107(f)(1)] shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State.

Section 107(d)(2) of SARA, amending Section 107(f).

Section 11.93 Post-Assessment Phase—Restoration Plan.

Several comments stated that a legally binding restoration plan must be required before monies could be collected using the type A rule. In addition, one of these comments stated that the very rationale for the proposed § 11.93(c) [now (d)], allowing the restoration plan to describe actions to be taken that are to be financed from more than one damage award, shows that in many instances discharges or releases will be so small that they will entail no need for restoration and, therefore, no damages would be recoverable under either CERCLA or the CWA. The comment continued that, while the "master plan" concept has some utility for type A assessments, it should be combined with a confirmation of exposure and more detailed regulatory requirements to ensure that the funds are spent for restoration. Another comment was concerned that the proposed type A rule would allow

type A damages to be used for environmental restoration projects totally unrelated to damages from the incident event. Other comments emphasized that where no restoration plan can be justified (for example, small open ocean incidents) no damages for restoration can be assessed.

The Department would like to clarify that § 11.93 was intended to, and does, establish a requirement for a binding restoration plan. Section 11.92(e) of the final type B rule provides that: "Monies shall be paid out of the account established pursuant to paragraph (a) of this section only for those actions described in the Restoraton Plan required by § 11.93 of this part." This provision applies equally to restoration plans for type A assessments.

The Department intends that the restoration plan must address the natural resources identified by the type A procedures as having been injured. The Department believes that the language in § 11.93 expresses this intent. However, to ensure that this intent is clear, the Department has revised § 11.93(d) accordingly. The Department declines to include a requirement for a confirmation of exposure. This issue is more fully discussed above.

The Department believes that some of the comments have confused the question of the determination of liability for injury to natural resources with the problem of quantifying that injury, and then with the final issue of how the damage award will be spent. The assessment regulations treat these three items as separate components of a damage assessment. The post-assessment phase deals only with use of the funds after liability and quantification have been established. In many instances, some applications of the type B rule, and always with the type A rule, the actual quantification of damages will be based on the diminution of use value.

Quantification based on use value is only an attempt to determine how much money should be available, based on the natural resource damage provisions of CERCLA, to the trustee agency to accomplish restoration, replacement, or acquisition of the equivalent resources. The restoration plan required by § 11.93 is not intended to be a tool to measure damages, it is only a plan to apply the damage award in compliance with the statutory requirements. Allowing the combination of funds from more than one type A assessment was intended to avoid the extra administrative costs of writing a completely new restoration plan for each single incident when the damages awarded may not justify those added administrative costs. The provision also implements the requirement of cost-effectiveness by allowing one restoration effort financed by several damage awards, rather than forcing several small restoration efforts.

Information gathering

One comment disagreed with the Department's statement pursuant to Executive Order 12291 that the proposed type A rule does not directly impose any additional costs. This comment stated that the type A rule would impose data collection and costs far beyond those justified by the possible impact upon natural resources of oil discharges into coastal and marine environments.

The Department does not consider that the final type A rule directly imposes any substantial additional costs, but does agree that some costs of data collection are associated with obtaining the input parameters specified in § 11.41(c). As such, the Department has submitted to and has obtained approval by the Office of Management and Budget an information collection budget. The Department has added a new § 11.19 to identify this information collection requirement.

The Department has analyzed the expected impact of the rule, assuming that trustees exercise the option to use the rule, and has determined that the annual effect on the economy is less than $100 million.

B. Comments on the NRDAM/CME

1. Submodels

a. Physical Fates Submodel

Symbols consistency

Some comments stated that the technical document and the NRDAM/CME use a confusing array of units and symbols. These comments suggested that the accompanying document should include a list of the symbols and equation variables used within the NRDAM/CME, with each defined. Another similar concern expressed by some comments was that the times used in the NRDAM/CME were neither stated nor used consistently; for example, in the spill behavior model, time is variously expressed in seconds, hours, and days without a clear explanation of which is used when and why.

The Department points out that, in general, equations are presented in the NRDAM/CME technical document and in the program as those equations appear in the original citation. Conversions are made in the source code to standard internal units in the NRDAM/CME, e.g., mass in metric tons, distances in meters, and time in days. The Department has carried out a consistency check on the parameters, and all symbols are now defined within a separate section of the text within the NRDAM/CME technical document.

Another inconsistency suggested by one comment was that the NRDAM/CME displays on the screen one concentration and location of the discharged or released substance, but suggests another in the mass balance chart. Two examples of such behavior were given: the oil slick trajectory on the screen shows a very small surface slick, but the slick is given a high value in the mass balance chart; and the sediment concentration is shown as being in a very large area on the screen, but is given a value of zero on the mass balance chart.

The Department notes that the perceived inconsistencies questioned by this comment are incorrect interpretations of the NRDAM/CME output. The correct interpretation is that there is a very small amount of mass distributed over a relatively large area.

Surface spreading

Several comments considered the NRDAM/CME's interpretation of the surface spreading of oil. One comment stated that test runs of the NRDAM/CME showed that the assessment values were not affected by the dimension of the surface slick. Others, however, concentrated on the thickness of the slick, stating that the NRDAM/CME incorrectly projects the thickness of the surface spreading. One stated that, while the NRDAM/CME spreads spilled oil until it reaches an average thickness of 0.1 mm, research and large accidental oil spills have shown average slick thickness ranging from 0.2 to 0.01 mm. Another comment stated, however, that the NRDAM/CME's computation of a thickness of 0.01 cm is reasonable, but that in reality, slicks spread out into sheen and thicker patches with the thicker patches containing most of the oil. This comment stated that it is not clear if the area considered by the NRDAM/CME is that of sheen plus thick oil or thick oil alone.

The Department notes that comparison of the NRDAM/CME spreading computations with an actual observation of a test spill shows that the NRDAM/CME results are reasonable. It is true that the NRDAM/CME does not reflect the variability observed in the field. The NRDAM/CME considers only the area of thick oil, and does not consider sheen. The Department agrees that a terminal spreading thickness of 0.01 cm is reasonable, and has retained this value of terminal thickness in this final rule.

Another concern noted by several comments was the surface movement of the slick. One comment stated that the slick does not follow the movement of the underlying water. Another stated that, while the slick moves in the NRDAM/CME as the vector sum of the wind and water current, the slick actually moves at about three percent of the wind velocity relative to the underlying water; thus, moving the slick with the water, as done in the NRDAM/CME, incorrectly maximizes the oil concentration in the underlying water.

The Department notes that the revised NRDAM/CME accounts for this effect by diluting the computed concentrations by the ratio of the additional area swept out by the slick to the area of the slick itself. This dilution factor increases with time until the surface slick retains less than 10.0 percent of its original mass of aromatics. The Department notes that the documentation accompanying the proposed NRDAM/CME incorrectly gave the impression that the slick moved only with the water velocity.

One comment pointed out that the NRDAM/CME does not account for the fact that, over time, the oil will spread and break up into patches that become physically separated, thus resulting in an area of influence much greater than that currently shown by the surface slick in the NRDAM/CME. Another comment, however, pointed out that oil and many other substances will only create a significant effect at or very near the surface. Finally, one comment felt that the NRDAM/CME predicts higher concentrations of oil in the water column than any values that have actually been measured at accidental incidents or at incidents created under controlled conditions; and, since the NRDAM/CME does not reflect the fact that the slick is actually dissolved and dispersed into a larger volume of water than the NRDAM/CME predicts, the actual concentrations are similarly lower than those predicted by the NRDAM/CME.

The Department notes that while the NRDAM/CME does not account for the breaking of the oil slick into patches, the net area covered by oil is the same in either case. In addition, the revised NRDAM/CME predicts water column concentration in the water column in the parts per billion range, which is consistent with observations.

Other comments stated that the NRDAM/CME does not account for the effects of temperature, viscosity, or surface tension on the spreading of oil, nor is any allowance included for the fact that viscous oils do not spread. Yet another comment stated that the Department must justify the surface transport velocity, the effective diffusivity, the level at which volatilization can be ignored, and the assumption of zero ambient background levels in sediment. Finally, one comment stated that the NRDAM/CME formulation for spreading of pollutant incidents on the sea surface does not follow the original form of the equation by McKay cited in the NRDAM/CME technical document.

The Department notes that none of the standard algorithms for spreading of oil on water account for the effect of temperature or viscosity. Highly viscous oils spread less than oils with lower viscosity in the NRDAM/CME only because a thicker terminal spreading point is specified. The spreading equation used is the second, gravity-viscous, of three regimes formulated by Fay (1971) and modified by MacKay, et al. (1980), who simply replaced volume by the product of area and thickness.

It should be noted that the NRDAM/CME does not consider the first (gravity-inertia) phase of spreading, during which spreading is much more rapid than during the later gravity-viscous and surface tension-viscous phases. Thus, the correct coefficient for spreading is that which results in realistic overall simulations of spreading not on behavior at or near time 0, the time of the initial discharge or release.

The Department points out that the effects measured by the NRDAM/CME are for those resulting from the incident, not those that may result from a change from possible background sediment concentrations. The Department also notes that the NRDAM/CME does not necessarily assume that ambient concentrations are zero, but does assume that those concentrations are negligible relative to the toxic threshold levels listed in Appendix C of the NRDAM/CME technical document.

Evaporation

Several comments expressed concern over the NRDAM/CME's treatment of evaporation. One pointed out that the NRDAM/CME may undervalue the role of evaporation in relation to dispersion and dissolution. This comment stated that the NRDAM/CME predicts that, for both aromatics and alkanes, 50 percent of the available material will evaporate and 50 percent will disperse and/or dissolve. The comment felt, however, the likely ratio of evaporation to dispersion and dissolution is 100 to 1 for aromatics and 10,000 to 1 for alkanes. Another comment stated that the NRDAM/CME gives a reasonable picture of the evaporation, but that it is not clear how diesel fuel or other narrower distillates of crude oil are handled in the NRDAM/CME or whether crude oil is treated as a mixture of volatile and non-volatile material. This same comment said that there is a problem in defining the equivalent vapor pressure, because in reality the vapor pressure changes as the oil evaporates. One comment stated that the NRDAM/CME should be reviewed and revised to more properly depict the influence of the mechanism of evaporation, while another questioned why the McKay and Matsugu equation, referenced in the accompanying document, was modified.

The Department notes that, in the final NRDAM/CME, all oils are treated as a four-component substance consisting of volatile and nonvolatile fractions and that, for oil spills, the NRDAM/CME assumes that only aromatics contribute to toxic effects. Although other hydrocarbons are also entrained into the water column, and are included in the mass balance displays, only the aromatic fractions are used to compute exposure concentrations. For Prudhoe Bay Crude oil under certain conditions, the NRDAM/CME estimates over 99 percent of aromatic in the atmosphere and less than 1 percent in the water after 0.5 days, consistent with observations. Finally, the Department also notes that the proposed NRDAM/CME did use a modification of the McKay and Matsugu equation. This modification was based on McKay (1980). The final NRDAM/CME uses the original McKay and Matsugu equation.

Volatilization

Several of the comments stated that the volatilization rate for mass transfer from water column to atmosphere is in error. These comments stated that the NRDAM/CME appears to assume that oil will immediately and evenly disperse into the water column to a depth of approximately 20 meters, but that this is unlikely since most of the oil will remain near the surface and will be susceptible to evaporation. Such an error would result in a mass transfer rate from the water column to the atmosphere 400 times higher than it should be based on the theoretically correct equation. One comment stated that the erroneous assumption might greatly underestimate concentrations at the surface to which surface-dwelling biota may be subjected.

The Department agrees that the rate mentioned in the comment was in error and notes that the NRDAM/CME has been revised to account for the fact that a contaminant will, in general, be unevenly distributed in the water column; volatilization is now only

allowed to occur from the upper surface layer.

Another comment, however, stated that this error in the volatilization rate for mass transfer from the water column to the atmosphere may be offset, under some conditions, by an error found in the computation of the gas phase transfer coefficient; but, that in some cases, the gas phase coefficient is too low by a factor of 90,000, resulting in water column concentrations that are overestimated. Finally, one comment stated that the calculation for volatilization from the water column is severely flawed for substances like oils; while another stated that the rationale and appropriate documentation for selection of the relationship for the mass transfer coefficient should be provided.

The Department notes that an error found in the source code to the proposed NRDAM/CME has been corrected, and the equations have been replaced by more appropriate formulations.

Use of dispersants/dispersion

Several comments spoke to the use of dispersants on discharges or releases. It was stated that certain parameters in the NRDAM/CME must be revised to account for the impact of dispersants. The comments noted that, while naturally dispersed oil droplets rapidly lose volatile hydrocarbons, the use of chemical dispersants causes an almost complete dispersion of low specific gravity crude oils and a 50 to 80 percent dispersion of higher specific gravity oils. These comments then noted that the forces of dispersion and evaporation would therefore cause the concentration of discharged oil to decrease very quickly. This lower concentration would then result in lower toxicity.

The Department agrees that the fate and effects of oil may be changed by the addition of chemical dispersants. However, the Department notes that neither the proposed nor the final NRDAM/CME treats this change in fate or effects. The final rule states that if the change in biomass is due primarily to the use of a chemical dispersant, the use of the NRDAM/CME to determine damages may be inappropriate.

One comment noted that the proposed NRDAM/CME used a vertically averaged convection/dispersion formulation to compute horizontal water column transport. The comment pointed out that the equation used is solved analytically assuming that, among other things, diffusivity is held constant, but that the diffusivity value used in the proposed NRDAM/CME was time-dependent. The comment stated that the time-dependent diffusivity contradicted the assumption required to obtain the analytical solution.

The Department notes that the analytic solution for the equation used in the NRDAM/CME can be derived for a time-dependent diffusivity. A discussion of the solution methodology is given in Csanday (1973). However, in Csanday (1973) a recommendation is made for use of a constant eddy diffusivity as a reasonable approximation of the time-dependent value. The final NRDAM/CME has adopted the constant eddy diffusivity approach, as discussed in Volume I, Section II of the NRDAM/CME technical document.

Another comment stated that dispersion is very dependent on oil viscosity, density relative to water, and mousse formation, none of which are included in the NRDAM/CME. One comment stated that it is generally believed that as a slick spreads and thins it disperses faster, not slower as the equation used in this section of the NRDAM/CME indicates. The Department agrees with this comment and has revised the dispersion of oil slicks to include the effect of viscosity and mousse formation, following McKay, et al. (1980).

Weathering of oil

Several comments noted that the NRDAM/CME does not address the fact that the spilled oil on the surface and in the water column weathers rapidly and, therefore, does not consider the fact that these "weathering" forces will reduce the concentration of the oil at the surface and upper water column. These comments stated that the result of this reduction in concentration will be a reduced biotoxicity of the discharged or released substance. Another comment stated that the NRDAM/CME also does not incorporate factors such as biodegradation and photolysis that will affect the fate of discharged oils.

The Department points out that degradation of oil through such factors as biodegradation and photolysis is included in the NRDAM/CME, and that "weathering," as it refers to mousse formation, has been added to the final NRDAM/CME. Weathering through evaporation was included in the proposed NRDAM/CME.

Degradation

Though one comment suggested that it was not clear whether chemicals produced when a spilled chemical decays are considered when the effects of a chemical incident are determined by the proposed NRDAM/CME, another comment stated that neither degrading reactions nor toxic photoproducts from such reactions are considered, but that these factors should be included in the NRDAM/CME since a major fate process is conversion of the chemical by photolysis in the water column. This comment pointed out that these reaction products themselves can have a profound effect upon natural resources and, as such, should be taken into consideration by the NRDAM/CME. Other questions raised by comments were how the numerical interpretations of "persistent," "degrades slowly," and "degrades rapidly" are justified; and whether the degradation rates are based on a units/day basis or on a percentage.

The Department points out that the decay of a spilled substance is considered by the NRDAM/CME as degradation and resultant loss of mass of the parent substance. The formation of and potential toxicity from daughter reaction products are not explicitly considered by the NRDAM/CME. Modeling such complex reactions is beyond the current scope of the NRDAM/CME. A portion of these factors are, however, implicitly considered by the NRDAM/CME, since toxicity of the parent substance is based on bioassays in water where daughter products may form.

The Department notes that the numerical interpretations of degradation made in the final NRDAM/CME represent a four-step process. First, substances with well-known degradation rates were identified. Second, these substances were categorized by known half-lives. Third, a comparison between the chemical structure of substances with known numerical degradation rates was made with those of qualitative degradation rates. Finally, substances with qualitative degradation rates were matched, based on chemical structure, with those having quantitative degradation rates. The process is detailed in the NRDAM/CME technical document.

Entrainment

One comment pointed out that the NRDAM/CME appears to combine entrainment, which seems to include as a separate phase oil mechanically dispersed in the water column, and solution, but that this assumption is not entirely realistic, since even an insoluble oil will be dispersed naturally. Another comment stated that the entrainment equation used in the proposed NRDAM/CME will greatly overestimate the entrainment of heavy fuel oils if a high solubility is used. One other comment stated that the equation for the fraction of the surface mass

volatilized and entrained overestimates the amount entrained and, therefore, the water column concentration. Another comment stated that time in the entrainment equation should be dealt with in days and that this fact should be so stated. Finally, one comment noted that the symbol "f" is not defined in the document, but assumed that it is the fraction dispersed per day.

The Department notes that, for oil slicks, the terms entrainment and dispersion are often used synonymously. In the NRDAM/CME, it is assumed that entrained soluble hydrocarbons become dissolved from the entrained droplets. This is reasonable in that: (a) The governing equations (MacKay, et al., 1980) estimate the amount of oil entrained that does not return to the surface slick; and (b) the computed concentrations beneath a slick are several orders of magnitude below the solubilities of the aromatics of interest (e.g., benzene, toluene, naphthalene). The Department also notes that entrainment was, and continues to be, measured in days. Also, "f," as explained in the final NRDAM/CME technical document, represents the fraction of a volatile component remaining in the surface slick.

Dissolved oils

One comment stated that the calculation for dissolved oil in water uses the solubility of a crude oil, but that this is not defined, nor is it explained how solubility relates to the relation of oil to water. Another comment stated that theory predicts, and laboratory and field studies have confirmed, that hydrocarbons in solution in water under oil slicks are present in very low concentrations. This comment further stated that evaporation of volatile hydrocarbons from surface oil slicks and near surface water exceeds the concentrations of those hydrocarbons in the water by from 100 to over 10,000 times. The proposed NRDAM/CME, the comment continued, does not conform to these field observations; it calculates high concentrations in the water column that are grossly in error and attributes biological toxicity to this large fraction in the water column, rather than to the dissolved hydrocarbons. Another comment stated that the NRDAM/CME assumes that all volatile hydrocarbons with a molecular weight of less than 180 are also soluble in water; however, that only the lowest molecular weight hydrocarbons have appreciable solubility. One comment suggested that the analysis found in the NRDAM/CME technical document does not support the assumption that diesel fuel is far more soluble than oil and, hence, dissolves into the water column more readily than does oil. Finally, one comment stated that the NRDAM/CME does not consider correctly the rate at which different hydrocarbons evaporate and go into solution.

The Department notes that the representation for oils has been revised to consist of four fractions: (1) aromatics with molecular weights less than 100; (2) aromatics with molecular weights greater than 100 but less than 160; (3) other volatile hydrocarbons with molecular weights greater than 160; and (4) residual hydrocarbons. The parameters (solubility, vapor pressure) for the low molecular weight aromatics are assumed to be the mean for benzene and toluene. The parameters for other aromatics are estimated based on analysis of the specific substance; other volatiles are assumed only to evaporate from the surface slick; residuals may be entrained (dispersed) into the water column, and therefore contribute to the mass balance, but neither other volatiles nor residuals are assumed to contribute to toxic effects in the water column. The Department believes this revised representation of oil provides a more realistic measure of biological exposure in the water column.

Dissolved versus particulate oil

One comment stated that it is important to discriminate between dissolution, dispersion, and evaporation. This comment argued that oil contains perhaps 30 percent of material that is volatile and susceptible to evaporation. It continued that oil also contains typically 3 percent of material that is soluble enough to be subject to dissolution. This soluble material is also volatile: Therefore, of the 3 percent that could dissolve, typically 2.9 percent will evaporate and 0.1 percent will dissolve. The comment stated that, by not addressing this issue, the NRDAM/CME can easily overpredict oil effects on marine biota by a factor of 10. It concluded that the key questions required to determine damage are that, of the dispersed oil, how much dissolves, and what are the toxicities of the dissolved and particulate oil?

The Department agrees with the thrust of this comment and has revised the NRDAM/CME and the NRDAM/CME technical document accordingly. The interested reader is referred to Chapter II of the NRDAM/CME technical document for a detailed discussion of the treatment of oil spills.

One comment noted that field measurements of dissolved hydrocarbons have demonstrated very low concentrations in the water under oil slicks, even when the oil was chemically dispersed.

The Department notes that the NRDAM/CME assumes that aromatics dispersed in the water column that do not return to the surface slick dissolve; dispersed residual hydrocarbons exist as particulates, and do not contribute to toxicity. The Department believes that the NRDAM/CME appropriately accounts for the differences between dissolved and particulate oil.

Seafloor

Several comments were received on the subject of seafloor and sediment contamination. One comment pointed out that the technical document incorrectly stated that oil does not sink. This comment stated that an analysis of representative oil spills has shown evidence of sedimentation of oil after all oil incidents. This comment continued that the physical fates submodel has no mechanism for sedimentation of oil except by density and adsorption to suspended particles. Another comment also objected to the fact that the settling process only relates to dissolved oil that subsequently is adsorbed, not to particulate oil, and stated that adsorbed and dissolved concentrations are not defined. One of these comments stated that the NRDAM/CME ignores the fact that zooplankton feeding on suspended oil droplets may be a greater factor for sedimentation. Another stated that sediment contamination could lead to tainting of such biological resources as lobsters, etc., and, therefore, could be a major economic factor.

The Department notes that, for oil, the physical fates submodel allows only aromatics to reach the sea floor, and only through the processes of vertical diffusion, adsorption, and settling. The NRDAM/CME follows only the aromatics because the toxic effect computations are based on aromatics concentrations. The Department agrees that a fraction of oil, referred to as a "residual," can also reach the sea floor, e.g., by sinking or via zooplankton fecal pellets. However, since no toxic effects are assumed to be associated with this behavior, it is not simulated in the NRDAM/CME. This residual is allowed to remain in the upper water column.

The Department acknowledges that tainting of biological resources may occur due to sediment concentrations of discharged oil. The Department has not, however, included the process of bioaccumulation that results in tainting within the NRDAM/CME. As is pointed out elsewhere in this section, there is, as yet, insufficient information available in the literature to adequately model

bioaccumulation. The Department notes that if a fishing area is closed, damages are calculated for the closure within the NRDAM/CME.

Some of the comments concerned the screen projection of the sediment contamination. One comment stated that the NRDAM/CME gives a designation of contamination even for negligible contamination. This comment stated that it would be better for the NRDAM/CME to adopt a threshold or background level of contamination and call all levels below this threshold "zero." Another comment suggested that the mass balance numbers be given in exponential forms to avoid rounding errors.

The Department points out that the screen projection of seafloor contamination is intended primarily to give the authorized official a sense of the physical dimensions of the exposed area, regardless of level of effects. If a threshold value were adopted in many cases, the authorized official would have no sense of whether the substance had ever reached the seafloor. Also, the Department believes that increasing the number of significant digits displayed in the print out would not add to the usefulness of the NRDAM/CME. Consequently, the Department has maintained the rounding algorithm found in the proposed NRDAM/CME.

Other comments noted possible problems with the equations used in modeling sedimentation. One pointed out that sample model runs showed an unreasonable front of sediment contamination extending well beyond (downcurrent of) the zone of water contamination.

The Department notes that the apparent "downstream front" of sediment contamination beyond the water column contamination is due simply to the fact that transfer of mass from the water column to the sediments is computed over +2 standard deviations, whereas the water column display is shown over +1.5 standard deviations. This has been changed to +2 standard deviations, in both the water column and the sediments, to avoid confusion.

While one comment stated that the default settling velocity of 10 m/day causes inaccuracy, in that the equation overestimates bottom contamination, another questioned whether the mean settling velocity of suspended solids is adjusted by density and salinity. One comment stated that the source of information regarding the bioturbation term is not given. Finally, another comment stated that the dissolution expression may be appropriate only for rivers or for substances denser than water.

The Department believes that the new default settling velocity of 3 m/day seems reasonable compared to observations (Carder, et al., 1982; Hawley, 1982). This rate is not internally adjusted for authorized official input for density/salinity changes, since the effects of these changes will be small. The source of the bioturbation term is Kullenberg (1982), and has been added to the documentation. The Department points out that in the final NRDAM/CME the mass transfer equation referenced is only applied to substances that are denser than water. While initially developed for rivers, the Department believes that the applicability of this coefficient is not limited to rivers and has retained the coefficient in this final rule.

Two comments referred to the configuration of the zone of contamination used by the NRDAM/CME. One comment stated that the rates of diffusion along and perpendicular to the mean current appear to be equal, and that the zone of contamination is plotted out as a square. Another comment stated that the physical fates submodel converts the mass of a contaminant into concentration by dividing the mass by the volume of a cylinder. The comment continued that a rectangular grid is then used in the NRDAM/CME solution of the equation and, as a result, the volume of a box would be a more appropriate choice for this computation, since the use of a box results in higher volumes and lower concentrations. One of these same comments stated that the values plotted out for a PCB incident in an estuarine subtidal region seemed to behave peculiarly, that after an initial precipitous drop, concentration varies irregularly with increasing distance from the source, before settling into a constant value. This comment suggested that a monotonic decrease in concentration would seem more reasonable.

The Department notes that diffusion rates along and perpendicular to the mean current are assumed equal. Although the zone of contamination is plotted as a square on the screen, computations assume a circular, normally distributed zone of contamination in the water column. A rectangular grid is used only in seafloor computations, not in the water column. The perceived irregular pattern of sea floor contamination by substances such as PCB's are, in fact, due to tidal movements of the water column. The reason for this irregularity is that, as tidal cycles occur, the plume of the substance may spiral, thereby turning back on itself and causing increases in deposition.

One comment that carried out test runs of the NRDAM/CME stated that, for open ocean incidents, the size of the X–Y variables made no difference in the size of the assessments, if all the other variables were equal. This comment continued that when +Y was the major axis, the assessments were always larger than when +X was the major axis. The comment suggested that this phenomenon may have resulted from a greater potential for along shore movement of the slick in the first case, and a subsequent greater potential for oiling of birds or other organisms. The comment suggested that any explanation for these trends should be documented. Another comment pointed out that the computer screen maps seemed to show a consistent bias toward water column transport in the downward Y direction, even when the Y component of the current was set to zero. Finally, another comment pointed out that varying the direction of the shoreline relative to the incident resulted in different assessment values: that when the shoreline was placed in the +Y direction, assessments were higher than when the shoreline was placed in the +X direction.

The Department notes that, in the open ocean (no land boundaries), the assessment for a given spill size will be independent of transport direction, all other factors being equal. If land is present, the NRDAM/CME results will differ as to whether an incident comes ashore, e.g., a land boundary in the +X direction, and stops or if a spill travels along shore for some time, e.g., a land boundary in the +Y direction, again, all other factors being equal. The Department notes that the NRDAM/CME assumes that tidal transport is up and to the right at the beginning of an incident, i.e., that the incident occurs at the beginning of the tidal cycle, and proceeds in a clockwise fashion. Any symmetry in the output relative to the X axis will be due to this fact.

Miscellaneous

A variety of general questions were raised by some of the comments to the proposed rule. One comment questioned whether the upper water depth and lower water depth are differentiated by temperature or by some other means. Another comment questioned the fact that the proposed NRDAM/CME assumes an instantaneous release of the spilled substance. Another stated that the toxic threshold concentration for substances migrating from estuarine to

marine areas or from one province to another are not defined. One other comment pointed out that the nature of the process by which exposure is calculated is not always clear. One comment stated that the Department appears to have assumed that volatile materials are those with molecular weights less than 180, an assumption that may be appropriate for petroleum-type materials; but that for chemicals, a vapor pressure comparison should be used. One comment questioned the basis for the regression equation used in the proposed NRDAM/CME and wondered if it is appropriate to use the log form of regression analysis. Another stated that the Department should explain how volumes of water are to be treated that have been contaminated and displaced from the incident. Another comment stated that temperature variation of oil properties was not considered in the NRDAM/CME, but could be a very important factor if the NRDAM/CME is to be applied to Alaskan and Gulf of Mexico waters. Finally, one comment stated that the NRDAM/CME will not make appropriate predictions for those chemical substances that do not act according to the assumptions of the NRDAM/CME.

First, the Department notes that the upper and lower water depth are differentiated by density (temperature and salinity). Also, the toxic threshold concentration is species, not province, dependent. As for the question of the use of vapor pressure for hazardous substances, the Department notes that vapor pressure is used for all pure substances. The Department also points out that the movement of a surface slick relative to underwater is accounted for by applying a dilution factor that increases with time. The Department agrees with the comment that temperature variation of oil properties should be considered and notes that viscosity and vapor pressure have been corrected for temperature. Finally, the Department agrees that the NRDAM/CME will not make appropriate predictions for those substances that do not act according to the assumptions of the NRDAM/CME.

b. Biological Effects Submodel

Toxicity levels

Many of the comments received on the proposed NRDAM/CME dealt with the question of toxicity levels. One comment stated that, for toxicity levels, no one number would likely be appropriate for a whole group of organisms. Another comment noted that, while it may be possible to estimate a value for a group within a province, the values surely would not be the same for groups from different provinces; therefore, the NRDAM/CME should incorporate different average values for different groups of organisms.

The Department points out that, while it is true that the toxicity of a substance varies by species and environmental conditions, not enough acute toxicity information exists to derive species- or species-category-specific toxicity values, nor values specific to the environmental conditions of different provinces. While acknowledging such variability, the Department notes that the development of a type A procedure necessitates the use of average values. Appendix C of the NRDAM/CME technical document does contain different average values for the major groups of organisms comprising the food web (e.g., phytoplankton, zooplankton, benthos organisms, and fish).

One comment requested that the NRDAM/CME be modified to calculate the contaminant residue levels accumulated by a species resulting from the discharge or release. Such a modification should enable the authorized official to specify a contaminant level as input to the NRDAM/CME to determine damages for the contaminant residues calculated. The authorized official could derive the contaminant level for input to the NRDAM/CME based upon a review of pertinent health, safety, and environmental standards and guidelines. The modification would expand the proposed rule, which allows for the establishment of damages based on the actual closure of a fishing area by an appropriate Federal or State health agency due to contaminant residue levels accumulated by the biota.

Because of several factors, the Department has not modified the NRDAM/CME as requested by the comment. Although considerable progress has been made in modeling the bioaccumulation of substances by aquatic organisms, much of this work has centered on predicting the bioaccumulation of selected heavy metals and lipophylic substances, such as polychlorinated biphenyls, in the whole body of organisms. The closure of a fishing area because of the bioaccumulation of a substance is primarily due to the concentration levels in edible tissues, not the concentration level in the whole body. The fraction of whole body levels contained in edible tissues is known to vary widely depending on the species of interest, the age and sex of the organism, and the time of year the analysis is performed. The Department considers that the degree of variability in edible tissues and the lack of modeling work to account for this variability precludes inclusion at this time of bioaccumulation within the NRDAM/CME.

Another concern voiced was to the presumption in the NRDAM/CME that a surface slick justifies the application of the NRDAM/CME. This comment stated that it is questionable that a toxic concentration would necessarily exist in the water immediately beneath a slick that would result in a significant biomass being captively exposed and injured; and that, in fact, it is possible that there would be an increase in biomass due to nutrient effects of the organic material discharged. The comment also stated that it is highly questionable that the lower water column would see any significant increase in toxicity from an oil discharge or that organisms would be captive and injured, particularly in open water.

The Department notes that, in the NRDAM/CME, a surface slick does not affect organisms living in the water column, and so toxic concentrations do not necessarily exist in the water immediately below a slick. The physical fates submodel simulates both the movement of a slick and the concentrations in the water resulting from dissolution of the toxic substance.

One comment stated that, generally, a correct kill rate curve depends on species, toxic substance properties and mechanisms, and environmental conditions, so that no single kill rate curve would be likely to fit all circumstances. This comment suggested, therefore, that, in the absence of specific knowledge, either the linear or the constant kill rate is the likely choice. Finally, another comment stated that, because 85 percent of incidents of concern involve petroleum, this evaluation of application factors should focus on crude, refined, and residual petroleums.

The Department points out that, since 85 percent of incidents of concern involve petroleum, considerable attention was focused on modeling the fate and effects of oil spills and on the physical, chemical, and toxicological parameters provided in the data base. The application factor (threshold) for the toxicity submodel, defined as that concentration where 1 percent of individuals die in 96 hours, was based on analysis of petroleum product toxicity data.

Several comments spoke to the issue of mortality in relation to time. One of these comments noted that the

accompanying document states that mortality is directly proportional to time, and that this relationship may overestimate the kill for shorter exposure times. This comment agreed that the idea of an exponential kill, i.e., that kill rate is constant, is a plausible assumption for invertebrates in open ocean. The comment noted that this view implies a random encounter between affected organisms and the spreading concentration of the lethal substance within the area under consideration; a phenomenon that, if correct, would result in the NRDAM/CME underestimating the kill for intervals shorter than 12 hours. The comment continued that, if mortality were the result of cumulative toxic effects, it is conceivable that little or no mortality might occur before 96 hours; thereby causing the NRDAM/CME to overestimate the kill for periods less than 96 hours. Finally, one comment suggested that a time threshold be built into the NRDAM/CME, so that organisms are not killed if excessive concentrations are not encountered for more than a specified amount of time.

The use of the 96-hour LC50 values was also explicitly discussed in relationship to mortality over time. One comment noted that assuming that exposure to oil or other pollutants will be constant for 96 hours is rarely, if ever, true. This comment suggested that a 24-hour LC50 value would probably be a better estimator of acute lethality in the field. Another comment stated that dividing 96-hour LC50 values by four to get daily estimates of kill is flawed both conceptually and in its implementation of the computer code, that toxicity rates vary both with concentration and with time. Another comment also stated that the assumption that the kill is proportional to exposure is not valid since the relationship between time of exposure and mortality is non-linear. Another comment stated that assuming a simple inverse linear relationship between LC50 values and time is a baseless assumption that could be underestimating mortality by underestimating LC50 values at long exposure times, which would be the norm for small incidents.

Another comment stated that using 96-hour LC50 values underestimates mortality at longer exposure times. This comment stated that threshold concentration is taken as the known limit of chronic effects, if this is known; otherwise, it is taken as 1 percent of the LC50. The comment stated that, in fact, this limit is seldom known, but, where chronic effects have been well studied, they frequently occur at concentrations well below 1 percent of the LC50. Finally, one comment stated that, in the present context, the chronic effects value probably has little or no environmental relevance since, in an acute spill situation, marine organisms are not ordinarily exposed to the spilled material for a long period of time.

One comment specifically discussed the application of the time relationship to hydrocarbons. This comment noted that petroleum hydrocarbon concentrations in the water column rise quickly to a maximum value, then quickly decrease with time due to various dispersive, dissipative, and degradation processes affecting the oil. The comment noted that, therefore, the 96-hour LC50 value tends to overestimate the true toxicity of oil in the field and probably also for hazardous materials.

The Department notes that, in the proposed NRDAM/CME, the relationship between mortality and time of exposure was assumed to be linear, and based on the 96-hour toxicity value. This assumption was made for the sake of simplicity. However, a number of comments noted this assumption as a major weakness, and so the NRDAM/CME has been revised. Sprague (1969) noted that the relationship between toxicity and mortality is a log linear function whereby the linear $\log_{10}$ of LC50 and $\log_{10}$ of time of exposure are linearly related up to 96 hours of exposure at which time further exposure kills no more individuals. This relationship was derived for all chemicals and species where at least three exposure times were available in sources of quality-controlled data (F. Mayer, in preparation). The average slope of these regressions represents an average change in LC50 value with respect to a change in time of exposure for all substances in the data base, and is used to correct mortality for time of exposure in the NRDAM/CME. This relationship is incorporated in the NRDAM/CME. Therefore, the NRDAM/CME will not consistently overestimate mortalities for relatively short exposure times. The incorporation of a time threshold for exposure is no longer necessary and the NRDAM/CME is not sensitive to variation in the time step. The use of the 96-hour LC50 in the data base is merely a convenience. The LC50 for the time of exposure is calculated in the NRDAM/CME. To estimate time of exposure in the NRDAM/CME, the fraction of newly exposed individuals during each time step is tabulated, allowing exposure time and mortality for that fraction of the population to be calculated in each future time step. These changes apply to all substances in the NRDAM/CME PHYSCHEM data base, including oils. The Department also notes that errors in the computer code have been corrected.

One comment noted that, although the direct mortality calculation is straightforward in that the exposure concentration is compared to an LC50 value and a threshold value, there is no theoretical basis, nor any supporting experimental data, for the equation used. The comment noted that the equation is merely correct at the LC50 value and at the assumed threshold, if indeed such a threshold exists. Several comments stated that the equation used to estimate the proportion of organisms killed at a given concentration level is inappropriate for this purpose because it generates values that are less than zero and greater than 100 percent mortality. Another comment stated that, since the values are not limited to 100 percent, the equation is, therefore, meaningless at high concentrations. Other comments pointed out that bioassay procedures typically utilize probit or logistic based mortality models that are bounded by zero and one. These procedures, the comments continued, have a strong theoretical foundation and therefore should be used instead of the current equation. The comment also questioned why empirical data are overridden by the NRDAM/CME with no indication of such provided in the documentation.

The Department notes that a number of comments pointed out that the relationship between mortality and concentration used in the proposed NRDAM/CME was empirical and had no theoretical basis. While several alternate equations were suggested, the accepted function for toxicity and bioassay studies is a log-normal relationship between percent mortality and concentration, with the mean response being the LC50 (e.g., Finney, 1971; Buikema, Niederlehner and Cairns, 1982). Therefore, the log-normal routine has been incorporated into the NRDAM/CME in place of the empirically-derived exponential function of the proposed NRDAM/CME. While this substitution will not substantially change the estimated mortality at different concentrations, the Department believes that it is a more theoretically correct formulation. The Department also points out that the original percent kill equation in the proposed NRDAM/CME was bounded at 100 percent mortality in the computer source code. The Department notes that the final NRDAM/CME considers probit analysis as suggested by the comment.

Several comments questioned the choice of the 10 percent relationship between C_0 and LC50, as used in the NRDAM/CME. One comment noted that, generally, the shape of a lethal dose curve is described by the integral of a log-normal distribution curve, yet the NRDAM/CME uses an exponential curve. Another comment stated that, given that the NRDAM/CME will be used in cases of small spills, where low concentrations will predominate over time, the exponential curve will systematically underestimate mortality; stating that the fact that this is the simplest curve to use given the data available is unacceptable. One comment stated that the C_0, the no-effect level, in the NRDAM/CME should be defined as the mean of the highest no-effect concentration and the lowest toxicant concentration causing mortality among test and control organisms, but that, unfortunately, this value rarely is cited in toxicology literature. Another comment stated that setting C_0 at 30 percent of LC50, rather than 10 percent, results in a much steeper response curve with lower mortalities at low concentrations and higher mortalities at higher ones. The comment noted that this approach is consistent with EPA results and provides a more realistic prediction of response to exposure to toxic material. Finally, another comment called for a more thorough analysis to be done of the available scientific literature to establish a more representative value for C_0.

The Department points out that, to use the log-normal model formulation, an estimate of the variance (s^2) of mortality as a function of concentration is required. In a review of acute toxicity data for petroleum products, Neff and Anderson (1981) report values of the "slope function," which is equivalent to 1/s (Finney, 1971) having a median value of 1.2 (s=.83). This "s" value results in 1 percent mortality at a concentration equivalent to 1.1 percent of the LC50 concentration. Several sources (Sprague, 1971; Gentile and Schimmel, 1984; Hansen, 1984; Cairns, et al., 1978) have indicated that the highest concentration of no effect, as a fraction of the LC50 (the "application factor"), is between 1–10 percent for most substances and ranges from 0.03 percent to 35 percent. Since 85 percent of spills involve petroleum products, the assumption of 1 percent mortality at 1 percent of the LC50 concentration is used in the NRDAM/CME. For a detailed discussion of the subroutines incorporated in the final NRDAM/CME, the interested reader is referred to Section II of the NRDAM/CME technical document.

Sublethal effects

Several of the comments on the proposed rule supported the elimination of potential sublethal effects noting that, since the scientific evidence on such effects is limited, any effort to assign an economic value to such impacts would be purely speculative and thus inconsistent with CERCLA's mandate. Several other comments, however, stated that the NRDAM/CME should be modified to assess chronic, sublethal effects, such as injuries resulting from bioaccumulation or bioconcentration, neoplastic growths on fish, fish-flesh tainting, disease, impairment of reproductive success, avoidance behavior, alterations in behavior, growth rate, and reductions in average fish weights. Yet another comment noted that a chronic effects value, defined as the lowest toxicant concentration causing statistically significant deleterious effects during prolonged exposure, should be included. One comment stated that there is a relatively small difference between the no-effects concentration and the acutely lethal concentration, assuming that bioassay exposure concentrations are measured values in the water column rather than nominal concentrations of oil added. One comment noted that sublethal effects may be the most common and the most costly form of injury resulting from a discharge or release. Another comment stated that the NRDAM/CME fails in its purpose by assuming that the only measurable injury to biological resources occurs upon death of the resource, and even then by assuming that only a percentage of the dead animals have a value sufficient to require compensation. One comment noted that indirect effects on resources are included only to the extent they result in future lethal effects on adult population. Another comment stated that, not only does the NRDAM/CME exclude sublethal impacts, but ignores even lethal impacts on important marine species such as whales and dolphins, and that injury to marine organisms can occur at concentrations much lower than those that cause immediate death, and that low concentrations of oil can have sublethal effects on fish eggs and larvae that may be important to recruitment.

The Department believes that, while there is evidence of sublethal effects of certain substances to biota, much of this information is anecdotal in nature. Not enough quantitative information on the relationship between exposure concentration and the observed sublethal effects exists to allow development of a quantitative model, even for well-studied substances, without making numerous arbitrary or speculative assumptions. As stated in § 11.33(b) of this final rule, the NRDAM/CME is not appropriate for situations where substantial sublethal effects are the primary result of a spill. The Department also recognizes the research that has been conducted to derive chronic effect values for prolonged exposure to low toxicant concentrations. Insufficient studies have been conducted, however, to enable chronic effect values to be extrapolated for the range of substances and species considered by the NRDAM/CME. The Department also notes that it would be inappropriate to determine damages based on the number of organisms that would have died in the absence of the discharge or release. The correct measure of damages is the comparison between the with- and without-a-discharge-or- release state of the environment. In both of these states, natural mortality would take place; therefore, only the additional mortality due to the discharge or release is compensable as a damage amount.

The Department acknowledges that the NRDAM/CME does not incorporate injury and therefore damages to many marine mammals. This is because of a lack of information on the relationship between exposure and mortality for these organisms and/or a lack of data on the value of these organisms in a form suitable for incorporation in the NRDAM/CME. However, this does not mean that these species are ignored. As discussed elsewhere in this preamble, the authorized official may use this type A procedure for resources included in the NRDAM/CME biological data base in parallel with a type B procedure for those resources not included in the NRDAM/CME biological data base.

One comment requested that the NRDAM/CME should include injuries caused by bioaccumulation of toxins. The comment noted that bioaccumulation and bioconcentration can have severe effects and must be considered in the NRDAM/CME. The comment suggested that KOW should be used to determine the expected concentrations of released compounds in the tissues of exposed organisms at each trophic level, and that once these values are derived for tissue concentrations, an appropriate biomagnification factor should be applied, and expected losses due to acutely lethal or chronically toxic concentrations calculated.

The Department acknowledges that KOW is appropriate for use in predicting the expected concentrations of a substance in the whole-body tissue of an organism. The NRDAM/CME provides a determination of acute toxicity of a substance based on the exposure concentration in water. The Department points out, however, that determining the acute or chronic toxicity of a substance based on body residues has not been adequately studied to allow such determinations to be included within the NRDAM/CME. For example, lipophylic substances are passively stored in body tissues that have a high lipid content (e.g., fat and nerve tissues). It is generally believed that such stored residues are "unavailable" for producing toxic effects. The stored substance becomes available to produce toxic effects only when the lipids are used by the organism, such as in times of food shortage, egg production, or migration. Other substances, such as heavy metals, may be stored in tissues through the process of chemical bonding. The stored substance may produce sublethal effects on the tissue, which in times of stress results in toxic effects to the organism. In general, studies on the acute and chronic toxicity based on body residues of substances have been limited to relatively few substances. As a result of these limitations, KOW is not included in the final NRDAM/CME.

Some comments requested that the type A rule allow for inclusion of chronic sublethal effects in the NRDAM/CME as injury to biological resources. The comments objected to not allowing for effects just because the types of incidents considered by the NRDAM/CME are likely to be small. One comment stated that there is no basis to believe that the relative importance of acute effects is greater than sublethal effects in small spills rather than in large spills. The comment stated that inclusion of sublethal effects in the NRDAM/CME was necessary in order to be consistent with the type B final rule. Another comment pointed out that, if sublethal effects are too difficult to determine within the scope of a type A assessment, the NRDAM/CME should be modified to adopt lower toxicity values and/or increase the percent of species affected to compensate for the sublethal injuries not included in the NRDAM/CME. Another comment objected to the type A rule allowing acute toxicity values derived from laboratory studies to be included in the NRDAM/CME, stating that there is insufficient data to support the assumption that such acute toxicities occur in the environment.

In response to these comments, the Department considers that there is sufficient technical information to allow acute toxicity values derived from laboratory studies to be used for establishing injury within the NRDAM/CME. Extensive acute toxicity studies have been conducted for a wide array of different oils and hazardous substances. The technical procedures used to derive such values are generally standardized and the results can be replicated. The species of aquatic organisms tested in these acute toxicity studies are representative of the species in the NRDAM/CME. There have also been sufficient field studies to confirm that such laboratory-derived toxicity values are representative of natural occurrences of a discharge or release. The Department continues to allow laboratory-derived acute toxicity studies to be used by the NRDAM/CME for determining injury in this final type A rule. However, the Department has not included sublethal chronic effects in the final type A rule. The Department recognizes that sublethal chronic effects may occur as a result of a discharge or release irrespective of the quantity of material involved. The number of organisms affected both lethally and sublethally is, however, considered to be related to the quantity of material discharged or released. The exposure concentrations causing either lethal or sublethal effects are also related to the specific chemical's mode of toxic action on the organism and the duration of the exposure. Thus, for any given substance, the smaller the discharge or release, the smaller the expected lethal and sublethal effects may be.

The Department considers that there is, as yet, insufficient technical information in the literature to allow for designation of specific exposure concentration values that cause chronic sublethal effects to aquatic organisms. Such values are required within the NRDAM/CME to establish injury using the type A procedures. The kinds of chronic sublethal effects that can occur are varied, as recognized by comments, and include, for example, such biological responses as reduced fish reproduction, skin and liver neoplasia, and fin erosion. A number of other sublethal biological responses are also recognized by the Department in determining injury to fish and wildlife species (see § 11.62(f)(4) of the August 1, 1986, final rule that contains the type B procedures). Although the measurement of such biological responses is sufficiently routine to perform, the specific exposure concentrations that cause such responses have not been adequately defined for the range of oils and hazardous substances contained in the data base of the NRDAM/CME. The Department emphasizes that the exclusion of consideration of chronic sublethal effects in this final type A rule does *not* mean that such effects may not occur as a result of relatively small discharges or releases.

Avoidance

Several comments noted that the proposed NRDAM/CME does not include avoidance behavior, a reaction that can severely affect the estimates of mortality for many species. The Department points out that while some evidence for avoidance of chlorine exists, for the majority of substances evidence of avoidance or attraction is lacking. In the case of petroleum hydrocarbons, it has been shown that fish, invertebrates, and marine mammals do not generally detect and avoid oil (National Research Council, 1985). Therefore, for a model that applies to a large number of substances, such as the NRDAM/CME, the assumption that biota do not change their behavior in the presence of the chemical is the most reasonable assumption.

One comment noted that the equation used to estimate the rate of change of organism abundance within the area affected by the spill is based upon a random migration velocity and the concentration gradient of the organisms. This comment stated that it appears that adult fish are redistributed homogeneously throughout the affected area after every time step, a process that could lead to an overestimation of adult fish losses. It was stated that, in practice, fish will not necessarily migrate into the area instantaneously, thus randomization will occur slowly. This and other comments stated that most adult fish and crustaceans will tend to avoid an area if a particular substance is present in toxic concentrations, so that it is not likely that fish will remain evenly distributed in the impacted area over time. Also, the comments noted that this avoidance often occurs at concentrations well below the lethal concentration, so that a smaller fraction of the exposed population will be killed than predicted in NRDAM/CME. These comments, therefore, concluded that some mechanism should be developed in the proposed NRDAM/CME to account for this fact. Finally, one comment noted that different results may be obtained depending on the total area considered

since the larger the area impacted, the more fish that are potentially affected and the greater will be the extent of replacement of the dead fish.

The Department notes that, in the proposed NRDAM/CME, the random migration model, which calculates recolonization into an affected area as a function of time, was only used for benthic organisms. As correctly noted by several comments, adult fish were assumed to fully recolonize the affected area at each time step. While this assumption is reasonable for longer time steps, the Department agrees that their recolonization at short time steps was overestimated. Therefore, the NRDAM/CME was changed to utilize the migration model for all adult species categories, including fish. Average swimming speeds by category (from the literature) were used as "migration velocities." Because of this revision, the NRDAM/CME is not sensitive to the time step when the time step is small. For larvae and other plankton, "migration velocities" are assumed to be zero. Therefore, new individuals are exposed to the pollutant only by entrainment into the pollutant plume.

The Department agrees that the total area affected by the discharge or release will, along with other factors, determine the biological effects of the incident. The Department notes that the NRDAM/CME determines this area under a variety of circumstances. However, the Department also notes that the NRDAM/CME determines the in place use values of the injured organisms, not necessarily the number of organisms to be replaced. The trustee determines the appropriate actions to perform based on the restoration plan, required in § 11.93.

Migration

One comment noted that the proposed NRDAM/CME does not take into account migration, even though it is known that migration occurs between the various provinces. One comment pointed out that some species are highly migratory and will be concentrated in an area at one time, while totally absent at another time. The comment pointed out that this migration is important since the economic value of a fish species can differ substantially from one province to another.

The Department points out that migration between provinces is accounted for in the biological data base in that biomass and numbers vary seasonally, reflecting this migration. Losses are tabulated seasonally in the biological effects submodel.

Mitigating factors

One comment noted that mitigating circumstances that may have affected the magnitude of the injury, e.g., storms, must be considered in the NRDAM/CME. The Department points out that storms or other mitigating factors, which are, or can be, represented by the environmental parameters, can be accounted for by appropriate selection of these factors, e.g., wind speed.

One comment stated that discharges into open water and particularly in high energy areas will simply not fit the NRDAM/CME, will likely cause no injury, and may actually serve as nutrients for some marine species. Therefore, the comment continued, some discharges may have positive, as well as negative effects, that must be considered.

The Department notes that the only substance where evidence of positive impacts could be found was for oil on phytoplankton in a few studies. However, in the overwhelming majority of studies involving phytoplankton and oil, negative impacts were observed (National Research Council, 1985). Therefore, no positive effects from spilled oil or any other substance were simulated in the NRDAM/CME. The Department agrees that some discharges or releases may have no discernible effect on the environment and notes that, under the appropriate circumstances, the NRDAM/CME will give this result.

Cleanup issues

Many of the comments spoke to the issue of the effect of cleanup activities on the assessment area. Some of these comments stated that these cleanup activities are directly related to the release and their effects should not be ignored. One comment stated that it would be inappropriate, under a legal scheme requiring restoration and replacement, to exclude certain costs of actual cleanup of damaged resources and damage to the resources resulting from the cleanup. One comment even stated that the exclusion of the effects of restoration or remedy is a serious weakness in the proposed rule, since it precludes an economic analysis of proposed restoration measures and overestimates damages in cases where essentially complete restoration can be accomplished at low cost. Another comment stated that contributory effects must be considered, stating that, where oil removal from beaches is necessary as normal routine, only the additional removal costs should be the measure of damages, and that type A assessment and cleanup procedures must be selected to ensure that no additional injury to trust resources result from the implementation of such procedures. Other comments stated that it is proper that chemicals added for cleanup purposes are omitted from the discharge volume, and that removed substances should properly be subtracted from the discharge volume.

The Department believes that these comments have misinterpreted the proposed rule. The cost of cleanup was not included in the proposed rule and continues to be excluded in this final rule, because these costs are not natural resource damages. These costs are allowed under other provisions of CERCLA and the CWA. As such, these costs, when the cleanup is performed in accordance with the National Contingency Plan, 40 CFR 300, are compensable and are additional to damages determined by either the type A or type B natural resource damage assessment procedures.

The Department believes that the natural resource damage assessment procedures should be well-coordinated with any cleanup, and that future restoration activities may be dependent upon the level and type of cleanup performed. Because of this fact, and to obtain a correct measure of compensation for injury, damages in this final rule and the type B rule are the residual after the effects of any response actions are accounted for. As such, removal of the discharged or released substance is accounted for in the NRDAM/CME. When this "removal" is performed by adding chemicals to the discharge or release, the authorized official should determine the amount of the substance "removed," the area from which the substance was removed, e.g., sea surface, and the approximate time after discharge or release that the substance was removed (see § 11.41(c)(1)(ix) of this final rule). These inputs to the NRDAM/CME ensure that damages are for residual injuries.

Recolonization

One comment stated that whether transient kills of plankton in the context of the type of discharges to which the NRDAM/CME may be applied will result in reduced populations or higher organisms depends on the recolonization potential of plankton. This comment pointed out that the recovery or recolonization time for injured phytoplankton and zooplankton is extremely rapid. The comment noted that, if this recovery is rapid enough, fish kills due to reduced productivity of these organisms appear unlikely. The comment concluded that this

relationship must be further studied to avoid a possible source of significant error in NRDAM/CME predictions.

Another comment suggested that the proposed NRDAM/CME may not adequately reflect the drifting characteristics and recolonization potential of zooplankton and similar organisms. The comment stated that the fact that such organisms are influenced by currents and similar forces differently from fish suggests that they may not be impacted by discharges or releases, or that the fish and plankton may be affected differently.

One comment noted that the NRDAM/CME fails to account for the currents in the oceans that are constantly affecting the population of algae, plankton, and other similar marine creatures in a particular location. The comment stated that an incident that affects a small portion of these organisms will have little effect on the food supply in the spill area in days, weeks, or months after the event, and that, therefore, the NRDAM/CME inaccurately depicts what is a dynamic ecosystem.

The Department points out that, in the NRDAM/CME, the growth rate (net production) of phytoplankton and zooplankton is reduced only while the spilled substance is present in toxic concentrations. Subsequently, the plankton are assumed to recover completely and instantaneously. Thus, the "recolonization time" is, in fact, extremely rapid (instantaneous) in the NRDAM/CME and recovery is complete once the concentrations are no longer toxic. The plankton are assumed to drift in the water, and not to swim, in the NRDAM/CME, in the same manner as the toxic substance. As the substance is diluted with fresh water, so are the plankton previously exposed mixed with newly exposed individuals. Because of this fact, the Department believes that the NRDAM/CME adequately models, within the concept of a simplified assessment process, the effects of the incident on plankton.

Ability of resource to recover

Several comments suggested that the likelihood of an individual or ecosystem recovering naturally within a reasonable time is not considered in the NRDAM/CME. These comments stressed that some recognition of the ability to recover should be incorporated and that the NRDAM/CME should be revised to consider it. These comments stated that ignoring this recovery would be a factual and legal flaw, and that the exclusion of the propensity for ecosystems and resources to recover will result in an overestimation of damages. Other comments stated that the suggestion that compensable damage occurs when resources that comprise the ecosystem have been injured to a degree that they will not naturally recover to pre-release conditions within a reasonable period of time reflects the mandate of Congress to promulgate cost-effective rehabilitation and restoration procedures. This comment suggested that, where natural forces in the ecosystem make restoration unnecessary, there has been no compensable injury.

The Department believes that these comments have misinterpreted the proposed NRDAM/CME. The ability of the resource to recover was, and continues to be, included in the NRDAM/CME. Recovery is a function of the time required for toxic concentrations to decline below their threshold levels within the coastal or marine environment. After this time, the population recovers instantaneously to its original equilibrium level. Damages for losses may continue for longer time periods because larvae and juveniles killed due to the discharge or release will not be counted as lost catch until after their time to recruitment.

Primary production

One comment stated that there are no documented cases in which a spill actually induced reduction of primary production to the point that nutrient availability became a limiting factor for growth of consumers. This comment noted that phytoplankton populations recover very rapidly from acute spill incidents and that primary production actually may increase to greater than prespill levels. One comment suggested that a simpler procedure to use would be to estimate what the total water volume is that ever experiences effect levels, then estimate the kill of fish in that volume.

The Department points out that complete documentation of the effects of actual spills does not exist due to difficulties of sampling, but that evidence exists that the majority of consumers are limited by food supply (Munk and Kiorboe, 1985).

One comment suggested that the NRDAM/CME's assumption that the fraction of a prey's biomass consumed by one predator is equal to the ratio of that predator's biomass to the sum of the biomass of all predators must be verified. The Department notes that the NRDAM/CME assumes a linear relationship between food resource production and consumer production. Since not enough information is available to quantify trophic transfer in all ecosystems included in the NRDAM/CME, the assumption is made that all consumers of a given trophic level have the same production:biomass (P:B) ratio. Under this assumption, the ratio of each individual consumer's biomass to the total consumer biomass of a trophic level is equivalent to the fraction of resource productivity the individual consumer utilizes. The similarity of P:B ratios among members of a single trophic level has been noted by Odum (1971).

Another comment stated that the NRDAM/CME should show the authorized official clear statements of the total number of organisms in the spill area, the fraction that is killed, the water volumes involved, and other information that would help the authorized official to understand the process and its results. The Department notes that the documentation in the NRDAM/CME technical document on the biological effects submodel has been expanded to clarify the calculation processes and the results of the NRDAM/CME. The printed output of the NRDAM/CME has also been modified to display the specific portion of the biological data base used in the calculation of injury and losses.

Some comments disagreed with the computation of the reduction in growth and growth rates of organisms affected by an incident. One comment pointed out that pollutant concentrations causing a 50 percent reduction in growth rate may not actually result in the death of any cells. Another noted that the growth of the algae may return to normal or even exceed normal very rapidly following termination of exposure or decrease in exposure concentration; thus the formula used by the NRDAM/CME will tend to greatly overestimate the loss of primary productivity due to exposure to a pollutant. Another comment stated that, because of residual currents, the kill of primary producers probably will have little effect on food supply in the spill area a month after the event. Finally, one comment suggested that, at concentrations only slightly lower than those that inhibit growth, petroleum stimulates primary production in phytoplankton communities. The comment noted, therefore, that spills of oil are unlikely to cause decreases in phytoplankton primary productivity in the long term, and that the total phytoplankton biomass may increase within a few days to levels equal to or higher than before the spill.

The Department points out that the computation of reduced growth rates of phytoplankton and zooplankton in the NRDAM/CME is simply a calculation of

lost (net) production. No plankton are assumed to die and productivity returns to normal instantaneously once the acute effects of the spill have passed. Therefore, the food supply to the food web is assumed to return to normal immediately. No stimulation of algae growth is simulated since the overwhelming amount of evidence is that this does not occur (National Research Council, 1985).

One comment stated that most coastal marine/estuarine ecosystems are characterized by detritus-based, not phytoplankton-based, food webs, so temporary alterations in phytoplankton biomass, if they were to occur, would not have serious ecosystem impacts. Another comment pointed out, however, that the extent to which acute spill events themselves could result in a decrease in the rate of detrius production is not known. Yet another comment stated that damage from oil spills to salt marsh vegetation seems to be transitory if the pollutant incident is an acute one; so that the calculations of food-chain impacts of acute spills probably are gross overestimates. Another comment suggested that mangrove swamps and possibly seagrass beds may be more vulnerable than salt marshes to spills.

The Department notes that the food web model is based on the most important primary producer in each ecosystem. In most estuarine and marine environments, this is phytoplankton, but in certain ecosystems it is another plant group. For example, in salt marshes it is Spartina spp., in mangrove swamps it is the mangroves, in kelp beds it is macroalgae, in grass beds it is eel grass or turtle grass, and so forth. Thus, lost primary productivity does not necessarily represent lost phytoplankton biomass in all ecosystems. In ecosystems where phytoplankton are not the most important primary producer, no losses are suffered by zooplankton (they are assumed negligible) and all food web losses pass through the benthos, whether the mode of trophic transfer is via grazing or detritus feeding. In addition, the Department notes that potential vulnerability is not predicted by the NRDAM/CME, only the effects of a discharge or release are modeled.

One comment noted that, while the NRDAM/CME recognizes the seasonal variation of primary productivity, productivity is known to display other wide variations that may not be related to seasonal conditions. This comment suggested that the NRDAM/CME may need to eventually incorporate a scaling factor or replacement option for site-specific production values as more data become available. The Department agrees that the productivity values vary more than by season and notes that these values may be further refined in the future if sufficient data become available.

Finally, one comment stated that an error in the source code results in daily values of productivity being used in lieu of yearly ones in the NRDAM/CME computation, so that the primary productivity values are underestimated by a factor of 365. The Department, after checking this item and all other portions of the source code for the final NRDAM/CME, believes that this comment was mistaken.

Benthic production

One comment stated that the equation used to compute benthic production is in error because the equation from which it was derived is taken incorrectly from Hargrave and is, in fact, a misrepresentation of Hargrave's work. The comment noted that the benthic respiration that would be measured in Hargrave's work is of little relevance in estimating production of commercially important organisms. The comment concluded that the arbitrary assignment of 10 percent of the benthic production to economically important shellfish cannot be accepted without further documentation.

The Department notes that Hargrave's model (1973) relates the fraction of primary production that is respired by the benthos. Assuming steady state, i.e., that all carbon consumed by the benthos is respired and that benthic biomass is not increasing, the fraction of primary production respired approximates the fraction of primary production consumed by the entire benthos. The fraction of this consumption that is accounted for by commercial species is estimated by dividing commercial species standing stock by total standing stock of benthos, i.e., by assuming a constant production:biomass ratio for the entire benthos. These assumptions are necessary due to the lack of more specific measurements and estimates in most environments. The ratio of commercial species standing stock to total standing stock of benthos has been further documented in the NRDAM/CME technical document. In the proposed NRDAM/CME, one value was used for all bottom types, 10 percent. After further review of the information available, it was decided to allow the ratio to vary by bottom type. The values incorporated in the final NRDAM/CME are: for sand and mud bottoms 7 percent; for coral reefs, 0.06 percent; for mollusk reefs, 13 percent; etc. These values are based on available information and are documented in the NRDAM/CME technical document.

Another comment stated that, although the NRDAM/CME predicts benthic organism mortality starting to occur at 10 ppb, field studies of oil seep areas show a varied and healthy benthic community with sediment oil concentrations greater than 3,000,000 ppb.

The Department believes that the "healthy benthic community" near an oil seep is an unusual one that has adapted over time to the local conditions and adaptations. The NRDAM/CME is designed to be general, for all environments, and will not reflect these unusual local conditions. The vast majority of benthic organisms, which have not adapted or acclimated to high concentrations of oil, would not be expected to behave as oil seep area benthos would.

Injuries to fish

Some comments objected that the proposed NRDAM/CME assesses injuries to fish species only if those species are subject to a harvest, stating that a reduction in the fishery resource regardless of reduction in catch is not considered in the NRDAM/CME, but should be. One comment pointed out that, since the NRDAM/CME places no value on damage to fisheries that are not harvested, there would be no recovery for damages to a highly valued species that might be temporarily put off limits to fishing at the time of the incident. Another comment questioned whether the fish population that would have been the fishing objective during the closure would actually be reduced in numbers due to the discharge. This same comment wondered whether, if fishing efforts are directed toward nearby populations of the same species, there would be any reduction in catch or at least a smaller reduction.

The Department notes that species that are not directly commercially or recreationally harvested are valued in the NRDAM/CME if these species contribute to the production, i.e., are in the food web, of species that are commercially or recreationally harvested. In instances when a fishing area closure exists at the time of a discharge or release, only the additional area of and extension of time for closure and different species categories, if any, should be used in the determinations of damages for closure due to the discharge or release in question.

The Department agrees that the potential for substituting fishing areas

and populations exists. However, it is not possible to build this substitutability into a generally applicable and simplified model to assess minor discharges or releases. Furthermore, as discussed in Section III of the NRDAM/CME technical document and specified in § 11.33(b) of this final rule, if prices change significantly, e.g., major changes in price due to changes in fishing effort, this type A procedure may be inappropriate.

One comment stated that a fallacy in the value determination procedure for recreational fisheries is that it appears to assume that a fish killed is a fish that would have been caught. Another comment suggested that the submodel should incorporate to some degree population dynamics models in order to estimate the impact of a spill or discharge on catch size, not simply its impact on fish mass. Yet another comment stated that the assumption that losses of fish and waterfowl translate directly to a reduction in catch sizes will lead to an overestimate of the value of these losses.

The Department believes that the comment stating that a one-to-one relationship exists between fish kills and catches misinterpreted the proposed NRDAM/CME. The valuation procedure used in the proposed, and final, NRDAM/CME does not value that portion of the biological population that would have died from natural causes in the absence of the discharge or release.

The Department investigated the potential of incorporating a fully dynamic fishery model in the NRDAM/CME. However, the costs, in terms of moving to a mainframe computer, and the lack of information needed to fully apply a dynamic model precluded its use.

The Department disagrees that, under the assumptions used in the NRDAM/CME, the valuation technique will tend to overestimate the damages. Lost catch is determined after an adjustment for natural mortality is made, and the NRDAM/CME uses the assumption of constant fishing effort. Under these conditions, the valuation method is correct.

Another subject at issue in the proposed NRDAM/CME was that of long-term losses of fishing resources. One comment stated that it is not likely that a fishery or a fishing area being assessed by a type A would be closed for a full year, since type A assessments are intended only for relatively minor events of short duration. Another comment questioned whether predictions far into the future could ever be sufficiently accurate to meet the common law requirement that damages not be speculative or too remote. This comment also stated that the assumption that injury will continue over such extended time periods has not been balanced in the proposed NRDAM/CME by any consideration of the ecosystem's ability to recover during that period of time. This comment suggested that the Department should limit the number of years covered by the NRDAM/CME in making loss estimates. Another comment recommended that a maximum time of six months, certainly no more than one year, be built into the NRDAM/CME.

In response to the comment questioning the duration of time a fishery or fishing area may be closed for relatively minor events of short duration, the Department notes that even minor events of short duration can result in long-term effects. The NRDAM/CME provides for such occurrences. The final rule states that the NRDAM/CME be applied for the time of actual closure. The NRDAM/CME estimates the long-term lost catch of adult populations due to lost recruitment of larvae and juveniles, and lost productivity from the food web. The Department notes that these estimates are based on widely studied and generally accepted principles. The equations used for these estimates are also generally accepted and widely applied in resource management. The Department, therefore, continues to allow estimates of lost catch beyond one year. The Department notes, however, that the final NRDAM/CME does not calculate short-term losses beyond twenty years due to constraints in data storage capacity available on the floppy disks. The Department does not view such limitations as an unreasonable constraint in that in the application of the proposed NRDAM/CME only nominal short-term losses beyond twenty years were demonstrated.

Fish catch

One comment stated that it is inconceivable that "damages" would continue for 22 years from an oil spill of, for example, only 750 barrels. Based on a test run of the NRDAM/CME, one comment noted that the number of adult benthic invertebrates killed per year in the test run stayed constant for vears 2–20 of a 20-year run after a one-ton PCB spill. This comment noted that one would expect the numbers to change with time because of depletion of the population by the chronic losses, among other effects; but that, without ready access to the data on the species levels assumed, it was difficult to interpret the results.

The Department believes that this comment has incorrectly interpreted the results of that application of the NRDAM/CME. Damages may extend into the future due to the loss of larvae and juveniles. Damages for these types of organisms are calculated at the time of recruitment. The Department notes that populations are assumed to be at steady state equilibrium levels prior to the incident, and that these same levels are attained immediately after toxic concentrations fall below their threshold level. The assumption of immediate recovery after toxic concentrations fall below threshold levels is reasonable, since modeling the dynamic characteristics of biological populations are beyond the scope of the NRDAM/CME.

Many of the comments related to the factor of age in assessing fish loss. Some comments noted that a constant growth rate implies an undiminishing growth with age, an observation contrary to virtually every known fish species. These comments pointed out that this assumption overestimates production and yield and, as weighted via inflation of dollar value, overestimates the worth of the catch.

The Department is in agreement with the comments stating that the assumption of constant growth rate with age is a simplification that will overestimate long-term losses and underestimate short-term losses; therefore, the NRDAM/CME has been changed to include a more sophisticated growth model. The growth model is the von Bertalanffy equation that, combined with the mortality subroutine, was first used by Beverton and Holt to calculate fishery yields and is used to calculate lost yields in the NRDAM/CME. The subroutine is fully described in the NRDAM/CME technical document and in Ricker (Bull. Fish. Res. Board Can., 1975). The result of this improvement is that lost catch decreases over time and the short-term underestimation and long-term overestimation problems have been eliminated.

Another comment stated that not using age as a factor ignores the fact that a juvenile or adult may be hardly affected by a substance, while larvae might be highly sensitive to the same concentration. One other comment pointed out that natural mortality also varies considerably with age. Another point made by one of the comments was that different life stages of the same species may occupy different levels in the water column, and this fact should be recognized.

The Department notes that age is considered in the NRDAM/CME in that

larval mortality (natural and due to toxic concentrations) is distinct from juvenile and adult mortality and relies on separately derived input data. Not enough information is available to quantify mortality separately at every age from juveniles through adults, however. Therefore, no age-specific variation is included after one year of age, with the exception of fishing mortality, which begins after the age of recruitment to the fishery. In addition, all larvae are assumed to inhabit the upper water column, whereas adults and juveniles vary in their habitat by species category. The categorization is based on life style, i.e., feeding mode and habitat (level of water column or on/in sediment).

One comment noted that the NRDAM/CME's estimates of larval population should be carried through the larvae's life cycle and to compare the estimates of standing stocks thus arrived at with the estimates of stocks derived independently and then incorporate these values into the NRDAM/CME. The comment stated that a rough calculation of this nature for demersal fish showed that the larval estimates gave rise to predicted standing stock populations that were much greater than the actual standing stock estimates the NRDAM/CME uses and stated that, therefore, there is some evidence of internal inconsistency within the NRDAM/CME.

The Department points out that, since fish and some benthic organisms migrate for reproductive purposes, there is no necessary correlation between larval population (and their survivors to adulthood) and the adults found in any one environment. Therefore, it is not appropriate to predict the standing stock of adults from the larval estimates of a single environment. The NRDAM/CME uses observed standing stocks of both larvae and adults in order to account for this migration. Therefore, there is no internal inconsistency in the NRDAM/CME.

Other comments raised the issue of the role of larval mortality caused by an acute spill in the overall impact of the spill on the long-term catch losses projected by the proposed NRDAM/CME. One comment noted that these losses may be greatly overestimated for some species, since most species produce a large number of eggs, with only a small fraction surviving to produce adults of harvestable size. This comment stated that it would probably be inappropriate to assume that any mortality to larvae due to a spill event would be in addition to natural mortality, since the less robust or healthy individuals in a population are the ones most likely to be killed by the spilled pollutants. Finally, this comment stated that treating the contribution of pollutant-mediated mortality of larvae as a multiplicative function of natural mortality probably greatly overestimates the impact of the spill on long-term recruitment to the adult population.

The Department notes that the NRDAM/CME calculates the number of larvae killed by a spill. To estimate lost catch in the future, the lost number of larvae are multiplied by their survival rate (which is, in fact, very low, 0.001 to .05 percent in their first year) to calculate the number of lost larvae that would have survived to one year of age. This is both a correct and appropriate calculation. It is not assumed that only those that would have died anyway are killed by toxic concentrations, as suggested by one comment, since there is no quantitative (or other) evidence that this, in fact, occurs in actual cases.

Several comments spoke to specific suggestions as to population issues. One comment stated that, given the large variation in values of population parameters, such as fishing mortality in different species and in different habitats, the NRDAM/CME values should be reviewed and an attempt made to further refine these values to better reflect this variability. One comment noted that the use of the equation for computing initial biomass assumes constant values of growth, natural mortality, and fishing mortality and that the NRDAM/CME's calculation of annual adult losses also assumes that these rates are constant. The comment warns against the use of a form that integrates over long time periods, citing several studies warning against these types of equations. Another comment pointed out that fishing mortality is a function of the exploitation of the population and is highly population- and site-specific; as such, it can change radically among seasons and from year to year, therefore, these factors should be considered in the NRDAM/CME.

The Department agrees that the values of population parameters (e.g., fishing mortality) vary by species and habitat. The data base was thoroughly reviewed and new information sought to refine these estimates. Particular attention was paid to variation by species category and province. While mortalities vary over time, not enough information is presently available to include this variation in the NRDAM/CME. Thus, all mortalities are assumed constant over time.

One comment noted that, while in-migration is included in the toxicity calculation, there is no allowance for in-migration in the fish catch loss. Yet, another comment questioned whether the distribution of fish biomass is dependent upon a depth contour of 200 meters.

The Department notes that, once the biological effects submodel quantifies the individuals killed in a spill, catch losses are calculated, regardless of where those fish would have migrated. This assumes that mortality rates remain constant regardless of where that species migrates. Since the mortality rates used in the NRDAM/CME are estimates for the dominant species in each environment and category, they are appropriate for calculation of catch losses regardless of where that species category moves subsequent to the spill. Therefore, migration after the spill is accounted for in the biological effects submodel and carried through to the economic damages submodel. The Department notes that the comment was correct when it stated that the distribution of fish biomass of many stocks is limited to the 200-meter depth contour. This limitation is based on data atlases prepared by NOAA (NOAA, 1985a, 1985b).

One comment suggested that far more attention should be paid to developing realistic fishery-specific and age-specific estimates of growth, fishing mortality, and natural mortality as the results will be highly sensitive to these values. The comment stated that it might be simpler to calculate the initial mortality of fish and larvae, then figure out that these fish will never be caught, and on the average they will be a certain factor bigger in size, and a fraction would have died anyway, or would not have been caught. Another comment felt that a more realistic approach would be to employ the use of sustainable-yield models and other fisheries management/population dynamics models in order to estimate the actual reduction in fish available to the fishery. The comment noted that, while this may be beyond the scope of the modeling effort, this conservatism needs to be recognized.

The Department points out that the design of the biological effects submodel is to calculate initial mortality of fish and larvae, and then to use accepted fisheries management models (as reviewed by Ricker, 1975) to calculate lost fishery yields. The Department agrees that the use of dynamic sustainable yield type models are beyond the scope of this modeling effort.

One comment noted that there might be some danger in looking only at small spills, since the effects might increase greatly for large spills due to the nature of the assumed dose-response relationship. Another comment stated that by assigning mortality for all water column marine species based on mortality of the most sensitive species to dissolved aromatic hydrocarbons, the NRDAM/CME predicts mortality to marine organisms in the water column where none exists.

The Department points out that the assumed dose-response relationship is based on the average response of a species, and that the response of all species data available were averaged in an attempt to estimate mortality of the average, not the most sensitive, species. The dose-response relationship was not viewed solely for small spills.

The issue of community structure was raised by one comment noting that, within the NRDAM/CME, the costs from phytoplankton losses are calculated just as the proportion of lost production without considering changes in community structure. The comment suggested that the potential shifts in community structure may be of much greater concern. In this same vein, another comment stated that assigning the food-chain losses of planktonic secondary productivity to the upper trophic levels in proportion to their relative biomass ignores the very different metabolic requirements of these groups.

The Department notes that the food-web model does assume that all members of a single trophic level have similar production-biomass ratio (i.e., weight-specific growth rates), but not necessarily the same metabolic rates. While it is true that the food-web model is very simple, not enough quantitative information exists to include more detail in the NRDAM/CME while allowing it to be applied generally, to all possible environments. Quantitative information is particularly incomplete with regard to induced changes in community structure.

One comment stated that the average established productivity of a fishing area during the particular season of the actual closure period must also be considered. Another comment noted that the NRDAM/CME has not been verified to see if running it on the basis of a seasonably stable standing stock assumption does, in fact, lead to stocks remaining seasonably stable, rather than fluctuating with time.

The Department notes that the fishery yield lost during fishing area closures is calculated on a seasonal basis. The biological effects submodel is not designed to be run as a "seasonable-stable" ecosystem model. The submodel is simply a calculation of mortality given observed standing stocks in an environment, followed by calculation of the catch that would have otherwise been obtained from those stock losses. The submodel is not a complete ecosystem submodel, and there is no feedback to the ecosystem after a pollutant has been spilled. While feedbacks may occur after a spill, not enough information is available to develop such an ecosystem model at the present time, particularly for one that may be generally applied.

Finally, one comment expressed some concern that the actual working equation with which mortality or fishing loss is calculated is not clear in the NRDAM/CME. This comment suggested that this section needs scrutiny by a fish population expert.

The Department notes that, while the documentation of the fishery loss calculations was complete in the proposed NRDAM/CME, it has been expanded and clarified in the revised NRDAM/CME technical document.

Species-specific fishing closure

Several comments noted that there are few "total" bans on all fishing, that such complete closures of areas are rare; therefore, the proposed NRDAM/CME should be modified to accommodate partial closings. One comment pointed out that normally such closures are species-specific, to reflect differences in bioaccumulation of contaminants of concern for public health. This comment, therefore, suggested that linking a partial closure to a bioaccumulation standard would yield more accurate results, since spills of toxic substances affect various species of fish differently. Another comment stated that the NRDAM/CME should be expanded to account for prohibitions on harvesting of one or a few species, thereby permitting the trustee to specify that fishing is banned for certain species or groups of fish or mollusks. Another suggested that the proposed NRDAM/CME be modified to include damages and criteria for shellfish bed closure. One comment noted, however, that no damages for fishing losses should be assessed for periods not historically and customarily used for fishing in that area. Finally, one comment stated that, even if the NRDAM/CME were so modified to reflect partial closure of fishing areas, the values generated would not be of sufficient magnitude when compared with actual value of the lost resources.

The Department agrees with many of these comments and has revised the NRDAM/CME to accommodate partial fishing closures. Damages for closure of a fishing area are based on the historic trends for fishing in the province of the closure. The authorized official is asked for closure information for each species category, thus allowing closure of shellfishing only, for example, or to a combination of species. The Department disagrees that the value of a partial or total fishing closure determined in the NRDAM/CME is different from the "actual value" of the lost resource because the NRDAM/CME uses historic trends for fishing.

De facto fishing closure

One comment asked the Department to provide more guidance on what constitutes a closure and to expand the definition of closure to include situations of "de facto" closure, where an area may not be officially closed, but fishing activity is adversely impacted by the discharge or release. It was noted that tainting is a frequent contributor to the loss of animals from fisheries and should, therefore, be considered. One comment suggested that the NRDAM/CME be modified to include State advisories for fish caught in a particular area and halting of Federal or State management practices, since these actions are clear impacts caused by the incident. Another comment, however, stated that some closures could be quite short and, that in most type A situations, it is unlikely that any closure would be justified beyond the time needed to clean up the spill or to allow for natural dispersion. Finally, one comment stated that impacts of fish consumption advisories and Federal or State fisheries management practices are beyond the scope of the proposed NRDAM/CME and, therefore, should not be considered.

The Department notes that the NRDAM/CME is not designed to accommodate so called "de facto" closures. The Department believes that, for purposes of a type A assessment, the closure decision must be documented in the Assessment Plan and based on such factors as, for example, public health threats or response action needs. Impacts that are related, but are less clearcut, cannot properly be assessed by use of the NRDAM/CME.

Injuries to birds

One comment objected that the proposed NRDAM/CME seems to limit the assumed avian injuries to those caused by oil slicks, but that birds are susceptible to effects aside from contact with slicks. This comment noted that toxic soluble materials can kill off key food sources, cause direct mortality, result in crossed bills, and

bioconcentrate so as to impair physical abilities and reproduction. The comment added that many species of birds are not discussed, although the statutes involved in the proposed rule do not so narrowly define the birds to be considered.

The Department notes that the loss of food sources for avian populations is now considered by the NRDAM/CME. Also, seabirds have been included as an additional species category within the NRDAM/CME. The Department has not, however, included sublethal effects, such as crossed bills, or the potential for bioconcentration within the NRDAM/CME since there is insufficient quantitative data available in the literature to model such effects.

Another comment questioned why the NRDAM/CME assumes that all organisms covered by oil of a certain thickness will be killed and that there will be a 50 percent kill rate for preening marine mammals affected by an oil spill. This comment noted that a fur seal is not similar to a shorebird and, in any event, the shorebird assumption of a 50 percent kill rate was based upon only a single study.

The Department notes that there is a lack of studies dealing with mortality to marine mammals coming into contact with oils and hazardous substances. The Department points out that the loss of birds due to a discharge or release frequently occurs under adverse conditions that make accurate quantification of this loss difficult. The Department also notes that mortality to birds and mammals due to contact with oil is difficult to quantify. However, the Department has obtained further information on this phenomenon and has set the percentage kill at 58 percent for birds and 63 percent for fur seals. The derivation of these percentages is given in the NRDAM/CME technical document.

Finally, one comment stated that the NRDAM/CME incorrectly assumes that the impact of a discharge or release on a waterfowl is on one that would have been bagged, and fails to take into consideration population dynamics factors. The Department points out that the impact on waterfowl in the NRDAM/CME has been modified to include population dynamics factors. Hunting losses stem from those waterfowl that would have been bagged, after accounting for the fact that some of the birds originally oiled would have died in the absence of a discharge or release. The NRDAM/CME calculations are based on the same population model as the catch loss calculations (Ricker, 1975). The NRDAM/CME has also been modified to include viewing losses on all birds in the biological data base, not just on shorebirds as was the case in the proposed NRDAM/CME. Birds affected include waterfowl (ducks, geese, coots, swans), seabirds (gulls, terns, cormorants, auks, shearwaters, pelicans, etc.) and shorebirds (sandpipers, plovers, etc.).

Sediment

Some of the comments related to the model's treatment of concentrations and effects of substances present in the sediments. One comment stated that it is unclear whether the threshold concentration levels and predicted concentration levels for benthic species are water column or sediment concentrations. The comment suggested that this distinction is important since sediment-adsorbed pollutants generally are orders of magnitude less toxic than the same pollutants in solution.

The Department notes that the proposed NRDAM/CME calculated the toxicity to benthic species based on sediment concentrations. The concentration used in the final NRDAM/CME for calculating toxicity to benthic species is the dissolved, interstitial water concentration within the sediment. This is calculated in the physical fates submodel using the dissolved-particulate partitioning coefficient. The reason for using this fraction of sediment concentration for toxicity calculations is that acute toxicity experiments have utilized dissolved concentrations in determining LC50s, and the values in the chemical data base reflect this.

One comment stated that the recolonization of an area of contaminated sediments will be delayed or slowed until the concentration of the contaminant in the sediment drops to some critical value and that, even then, much of the recolonization may be from recruitment of larvae from the water column. The comment noted that the role of immigration of adults from surrounding less affected areas in the recolonization of a pollutant-impacted benthic habitat is highly variable and somewhat species-dependent. Also, the comment noted that, for oil and organic pollution, recolonization of subtidal sediments may be fairly rapid after the spill, if sediment contamination was not too great. Another comment noted that bottom-dwellers would not likely experience any effect from the minor discharges of oil or other low density, low solubility substances that would be subject to a type A assessment. This comment suggested that a dense, low solubility substance may harm only the benthic creatures.

The Department points out that recolonization rates of benthic species are assumed to be very low in the NRDAM/CME, such that recolonization of large areas will be realistically slow. For example, an area of one square meter that has suffered 100 percent mortality would take 0.3 day to be recolonized by mollusks and 3 days by decapods. An area of 1000 square meters would require 89 days (a season) for mollusks and 9 days for decapods. By the next season after a spill, areas devoid of biota are assumed to be fully recolonized due to the migratory nature of the organisms, and to seeding from the water column.

Environmental parameters

One comment stated that only that information necessary to arrive at a reasonably accurate estimate of the injury should be required as input to the NRDAM/CME. Others stated that requiring the amount of data specified in § 11.40 [now 11.41] of the proposed rule is not consistent with the concept of a simplified assessment.

The Department has reduced the amount of information required as an input to the NRDAM/CME in this final rule. For example, water temperature and the calculation of the intertidal "area affected" have been incorporated into the NRDAM/CME. Consequently, the authorized official is no longer required to input these parameters to the NRDAM/CME. However, the Department does not believe that further simplification of the NRDAM/CME is possible without greatly diminishing its accuracy. The Department believes that the remaining parameters required as inputs to apply the NRDAM/CME are consistent with the concept of a simplified assessment.

Some comments stated that many of the assumptions upon which the biological effects submodel is based are not described clearly nor in sufficient detail. One comment felt that there is no cogent explanation of the derivation of the default values and why they are the "best available" values, and that more explanation should be provided with regard to the default values chosen for the NRDAM/CME. Another comment pointed out that the distinction between regulations and guidance is especially important, that for default values to achieve regulatory (mandatory and binding) status, the Department must, in the final rule, explain the basis for the values and indicate that these values cannot be altered by trustees without the Department conducting a notice and comment rulemaking pursuant to the Administrative Procedure Act. Another

comment pointed out that, since many of the quantitative biological parameter values are based upon "best estimates" of mean or typical values, it is important that the Department thoroughly describe and justify the rationale for and methods used to define specific values for various biological parameters. Other comments stated that substitution by the authorized official of site-specific environmental parameters, whenever available, should be stressed.

The Department notes that the technical document for the NRDAM/CME has been expanded and clarified. Specific assumptions on parameter values, such as migration velocities and the portion of benthic production attributed to economically-important shellfish, have been reviewed and documented in the text. The authorized official must use incident-specific environmental parameters when available. For the most critical parameters, the required environmental parameters, no default values are given. The Department agrees that the NRDAM/CME is regulatory in nature and has incorporated the NRDAM/CME by reference in this final rule. Any changes in the NRDAM/CME will be subject to the process of the Administrative Procedure Act.

One comment noted that the NRDAM/CME allows only a single wind speed and direction to be entered and that only a single value may be entered for each of the tidal velocity components in the X and Y directions. This comment also stated that it is unclear how the NRDAM/CME treats temporal variability of tidal current velocity over a tidal cycle. Another comment requested clarification of several points, such as how to estimate the amount of cleanup and the determination of the base point from which the trustee is to measure the distance to the study area boundaries. Finally, one comment stated that the only real use for the historical data and weather data would be for predicting the probable direction of travel of oil spills.

The Department acknowledges that only one point estimate of any environmental, or other, parameter is used as an input to the NRDAM/CME. Therefore, whenever possible, the authorized official should estimate average values for these parameters. For example, the average wind speed and direction, averaged over the duration of the incident, could be used as the input to the NRDAM/CME. This same process of using averages or approximations would also hold for determining the volume of material cleaned up. Study area boundaries can be fixed by using the initial spill site, or the center of mass of the initial spill site, as the "origin" and measuring the direction in the +X, −X, +Y, and −Y directions from that point. In addition, the Department notes that the effect of tidal currents is discussed in the NRDAM/CME technical document.

The Department disagrees with the comment that stated that the only real use for historical data on the parameters is for forecasting the direction of the spill. The Department notes that historical data on many of the environmental parameters should be useful in determining not only the direction of the spill but, as is the purpose of the NRDAM/CME, damages from the incident.

Bottom types

One comment noted that, based on sample runs, assessments are identical for sand and mud bottoms for all combinations of substance, spill size, province, and season. The comment noted that comparing rock and mud bottoms yielded only minor assessment differences.

The Department notes that the sample runs in question are for environments where sand and mud bottom abundances have been assumed equivalent, as outlined in Volume I of the NRDAM/CME technical document. Therefore, assessments should be identical for sand and mud bottoms in these runs. The minor differences in the aforementioned applications of the NRDAM/CME for rock and mud bottoms were a function of the minor differences in the biological resources present in those specific areas.

Intertidal runs

One comment noted that, in five simulations of volumes ranging over increasing orders of magnitude from 10 to 100,000 gallons, and assuming that one mile of beach had been closed for one week with no cleanup carried out, the results of assessments showed the same cost for the five volumes, relative to substance, province, and season.

The Department notes that the area affected in those runs of the proposed NRDAM/CME were specified to be identical; therefore, the resulting damages for loss of biological organisms and beach closure were independent of the volume of substance discharged or released in the intertidal area. However, the Department points out that the intertidal area affected in the final NRDAM/CME is not an input specified by the authorized official, but is determined in the NRDAM/CME. In the final NRDAM/CME, the intertidal area is dependent upon the amount discharged or released, among other factors.

Summary table

One comment stated that the authorized official needs an overview of the species that are relevant for any given run. The comment noted that it would be helpful to have a summary table that provides an overview, or perhaps to have the NRDAM/CME print out the information for the system under consideration. The comment pointed out that giving the authorized official the option of having the NRDAM/CME print out a species list, with seasonal abundance data, would have the additional benefits of providing permanent documentation of the species assumptions that went into the run, and additional data on standing stocks, which might aid interpretation of the NRDAM/CME output.

The Department agrees with the comment and has revised the NRDAM/CME so that it now prints out the biomass and numbers of individuals present in the environment of interest before the incident for the convenience of the authorized official.

Miscellaneous

One comment noted that the biological effects submodel should include information about the different species of fish, shellfish, birds, etc., that would be expected at a given location and time and about the lifestyles that would be expected. Another comment noted that seasonal trends are not always consistent for different spill sizes within the same province. Finally, one comment suggested that the NRDAM/CME should define the term "short-term losses."

The Department notes that the biological effects submodel includes seasonal information on biota in each location, as defined in Section III of the NRDAM/CME technical document. Lifestyle information is included in the form of species categorization, which defines trophic level and habitat (water column or benthic location). Seasonal trends vary by province depending on the migration patterns of fish and bird species. A large number of species migrate north in summer and south in winter, so the NRDAM/CME losses will tend to be highest in summer in the north, in winter in the south, and in spring and fall in between, depending on the details of the migration patterns and the relative values of the species, etc. Thus, seasonal patterns should not be expected to be consistent from province to province. The Department points out that short-term losses refer to direct kill

or lost production at the time of the spill, as described in the NRDAM/CME technical document.

c. Economic Damages Submodel

Willingness to pay versus willingness to accept

Several comments spoke to the issue of the use of willingness to pay (WTP) rather than willingness to accept (WTA) in the proposed type A rule. One comment noted that, in the accompanying report, the Department acknowledges that WTA is the proper concept to use in assessing injuries to the natural resources, but asserts that WTP and WTA should result in similar estimates. The comment stated that evidence shows there is a significant difference between the two, but that the Department ignored the literature reporting that WTA significantly exceeds WTP. Another comment stated that the Department loosely compiled estimates of WTP from studies limited to oil spills, but that these measures are irrelevant here because the proper measure is WTA. Instead, the comment stated that the Department should have compiled estimates of WTA from all types of discharges and releases. Two of these comments stated that the use of WTP rather than WTA significantly understates the injury to natural resources caused by discharges of oil and releases of hazardous substances.

One comment stated that the undervaluation resulting from the use of WTP rather than WTA was compounded by the Department by subtracting the costs a consumer is willing to pay to use the resource from the willingness-to-pay value. This comment felt that, at a minimum, the correct value should be the total set of costs a consumer is willing to incur in order to acquire the benefit. For example, the comment stated that the value of the natural resource to a State is not the economic "profit" a fishing fleet may earn, but the sum of the values that the use of the resource generates.

One comment noted that some studies indicate that the Hay-Charbonneau values used by the Department are likely biased upwards. This comment stated that the Bishop-Heberlein experiments suggest that the proposed type A values are highly inflated and subject to a methods effect.

The Department disagrees that it has ignored evidence on the potential differences in WTP and WTA. The Department pointed out, in both the proposed rule and in the NRDAM/CME technical document, that WTA may be the more theoretically correct measure for determining damages under CERCLA. The proposed NRDAM/CME technical document referenced the work of Knetsch and Siden, (1984) which showed some empirical differences between WTP and WTA. The Department also notes that the final version of the NRDAM/CME technical document retains this reference. While WTA may be the more theoretically correct measure for damages under CERCLA, there is far from universal agreement in the economic literature on the use of and results obtained from WTA. For example, there is empirical evidence indicating that WTA may over-value actual observed market behavior (see Cummings et al., 1984). A further discussion of these issues is presented in the NRDAM/CME technical document. Thus, for both theoretical and empirical reasons, the Department has maintained the use of WTP to value natural resources in this final rule.

The Department also disagrees that its review of the literature was "loosely compiled" as suggested by one comment. The Department carried out an extensive literature search to determine what studies existed and therefore were potentially available for consideration for the purposes of this rule. In most cases the only studies that could be used in this effort used the WTP concept.

The Department believes that the correct measure of value is willingness to pay, rather than total expenditures or costs. As fully explained in the type B technical information document, "Techniques to Measure Damages to Natural Resources," available in draft from the CERCLA Project at the above address, expenditures on recreational or other uses of natural resources are not an appropriate technique to measure WTP.

The Department notes that there are difficulties in interpreting the Bishop and Heberlein (B–H) results for the purposes of this study. As stated in Section V of the NRDAM/CME technical document, the B–H results are not directly comparable to the Hay and Charbonneau (H–C) results and are based on a limited geographic area. The H–C results continue to be used in this final version of the NRDAM/CME.

Option and existence values

Several of the comments on the proposed rule spoke to the issue of option and existence values. One group of comments noted that it is appropriate that option and existence values are not addressed in the proposed NRDAM/CME since speculative economic losses such as these are beyond the purview of either CERCLA or the Clean Water Act and such values are unproven and based on speculative methodologies.

Another group of comments, however, stated that option and existence values should be used in the type A rule. These comments stated that the omission of option and existence values in the rule results in a pervasive under-valuation of publicly-owned natural resources. One comment noted that the report's analysis implicitly defines existence value to include all non-use values, where use values are limited to harvesting or observing the marine life or visiting beaches, but that this definition does not constitute the entire universe of existence value. This same comment stated that the report does not assert that such values do not exist, but rather that readily available measures of these values are in short supply. The comment stated that the lack of off-the-shelf data hardly justifies omitting such values from the NRDAM/CME, and that the result of that omission is a systematic undervaluation of the resource damage. The comment stated that there are no principles in cost-benefit analysis or economic theory that provide a scientific basis for ignoring the value placed on beaches, waterfowl, shorebirds, marine mammals, and fish that are not consumed or observed.

The Department agrees that, in principle, option and existence values may exist for natural resources and that these would be additive to use values. However, as noted in the response to comments to the type B regulation, 51 FR 27674, August 1, 1986, more uncertainty surrounds the determination of these values than use values. In addition, and supporting this conclusion, virtually no empirical studies were found that addressed option and existence values for resources in coastal and marine environments in a form useful for this final rule, i.e., that allowed the calculation of marginal values for the determination of relatively small losses in the stock of natural resources.

The Department disagrees that a lack of off-the-shelf data does not justify omitting option and existence values from the NRDAM/CME. The Department notes that the type A rule is to use "best available" information. At this time, there is insufficient information to incorporate the concept of option and existence values into the NRDAM/CME.

Other comments stated that, if any natural resource with potentially significant option or existence values, for example, a marine mammal, is adversely affected, a type B assessment should be performed. Finally, one comment strongly disagreed that option

and existence values are only properly considered when rare or endangered natural resources are injured, as stated in the draft NRDAM/CME technical document.

The Department points out that the use of option and existence values is limited in the final type B rule to those instances where use values cannot be determined. Whether this limitation would be binding on the determination of damages or injury to any particular marine mammal under the provisions of this rule can only be determined on a case-by-case basis. However, it should be noted that the only marine mammals valued in the NRDAM/CME are fur seals. If other marine mammals are impacted by a discharge or release, the authorized official may perform parallel type A and type B assessments for the incident (see Section II of this preamble for a discussion of parallel assessments).

The Department agrees that the discussion of option and existence values in the draft NRDAM/CME technical document was too limited, and has expanded this discussion accordingly.

Shellfishing losses

One comment questioned whether it is appropriate for the NRDAM/CME to value recreational shellfishing losses as though they were commercial fishery losses. This comment noted that the NRDAM/CME assumes that economic losses to recreational shellfishermen from increased shellfish mortality can be accurately represented by commercial prices of shellfish. The comment stated that it is likely that the willingness to pay for recreational shellfishing exceeds the commercial value. Another comment stated that the Department's focus on marketable species and economically valuable resource uses, and the development of market price data or its equivalent, represents an appropriate implementation of common law damage principles.

The Department agrees that it would be preferable to have a specific value for recreational shellfishing, as is done with finfishing. However, a literature search of available information did not disclose a study that could be used for the purpose of the NRDAM/CME. In this instance, the Department determined that the best available data would, therefore, be commercial prices. The Department also agrees that the focus on market values in this final rule, where applicable, is appropriate.

Nonmarket valuation methods

Several comments stated that the proposed rule inappropriately fails to consider and incorporate nonmarket natural resource assessment methodologies. One of these comments stated that CERCLA does not limit the Department's obligations to develop assessment methodologies only for those resources for which third party estimates are readily available. Another comment stated that, since several damage assessment methodologies have been developed to calculate the cost of nonmarketed resources, it is inappropriate for the Department to ignore these methodologies. This comment stated that the Department should make use of the best methods available, including nonmarket assessment methodologies. Some comments stated that the Department should develop estimates for a broader range of nonmarket use values for inclusion in the NRDAM/CME.

The Department believes that these comments have misinterpreted the derivation of values used by the NRDAM/CME. Where market prices were available, they were used. This procedure is consistent with the final type B procedures. However, in many instances market prices were not available. In these instances, studies using nonmarketed resource methodologies were used to determine values. Again, this is in accordance with the guidance given in the final type B regulation. Thus, the Department has not ignored nonmarket methodologies, as suggested by some comments, but has used a methodology that is consistent with the hierarchy listed in the final type B procedures to determine damages in the NRDAM/CME.

The Department disagrees that its obligation in preparing this final regulation extends beyond the use of existing studies and data. The Department points out that section 301(c) of CERCLA requires the use of "best available" information in the development of this final rule. This requirement has been interpreted by the Department to mean that a research effort should not be undertaken to gather new knowledge, but should use existing information to prepare a "simplified" assessment process. The Department believes that the NRDAM/CME fulfills this obligation.

One comment stated that the proposed rule improperly limits assessments to those damages actually incurred. The comment noted that this restriction excludes many nonmarket use values that can be diminished by a spill, such as recreational activities that are not directly dependent upon beach use, and does not include use values of other coastal and marine areas.

One comment noted that the accompanying report stated that rare and endangered resources will not be affected by the type of spill that would trigger a type A assessment. The comment noted that this assertion would be true if the proposed rule required a type B assessment in every instance where rare and endangered natural resources are injured, but that such a trigger is not yet in place. The comment noted that, although the proposed type A rule involves spills that are small relative to those that trigger a type B assessment, this assumption does not support the assertion that a single type A spill does not pose a threat to the Nation's natural resources. The comment stated that it should be sufficient to establish that such incidents contribute to the damage, or the probability of damage, over time, and to assign individual incidents a share of the expected damages. Another comment stated that, even though beaches, mountains, and other scenic areas may be considered rare or even endangered, the fact that they are unique does not mean that they are immune from damage by a type A discharge or release, or that their pristine state is not valued by society.

The Department acknowledges that the NRDAM/CME does limit compensation to damages that are predicted to have actually occurred from the incident in question. The Department believes that to do otherwise within the NRDAM/CME would create speculative and unwarranted damage amounts. The Department agrees that rare and endangered resources may be affected by incidents that could be considered to be minor discharges or releases. However, the Department notes that many of these types of resources are not included in the data bases that are used by the NRDAM/CME. As such, if the authorized official deemed that a damage assessment was required because these resources were potentially at risk, a parallel type B assessment could be performed for these resources. The Department believes that the application of parallel type A and type B procedures, as allowed in this final rule, will adequately address the concerns expressed by the comment pertaining to rare and endangered species. The Department disagrees that CERCLA contemplates that potential damages for rare or unique resources could be apportioned and charged to each potentially responsible party

independent of the discharge or release being evaluated.

Unknown values

Several comments spoke to the issue of how the proposed NRDAM/CME handles unknown values. The comment noted that, rather than confuse average and marginal values, the NRDAM/CME sets these values, particularly values of marine mammals, at zero. One comment stated that, when data on resource damage is unavailable, the NRDAM/CME is careful to avoid a "garbage in garbage out" scenario. Another comment noted that, unfortunately, the alternative is too commonly employed and that perhaps the most startling feature of the proposed NRDAM/CME is the number of cases where the value placed on a natural resource is zero. Some comments stated that, despite the acknowledgement of the value society places on marine mammals, and the recognition that society values existence and nonconsumptive uses of marine mammals more than commercial uses, the NRDAM/CME assigns a non-zero value only to fur seals, one of the few such mammals that are commercially harvested. The comment noted that the zero value on sea otters is not due to the general exclusion of existence values, but rather because the only available study provided average rather than marginal values.

The Department believes that these comments have misinterpreted the fact that not all resources can be assessed using the NRDAM/CME. If a natural resource is not considered in the NRDAM/CME it does not follow that either the NRDAM/CME or this rule assumes a zero value for the natural resource. One of the criteria for determining the applicability of the NRDAM/CME is that "the estimated quantity and species type of biological resources potentially injured are not expected to differ significantly from the average biomass listed in Appendix B [of the NRDAM/CME technical document]" (§ 11.33(b)(1)(ii)). If the resources potentially injured are not listed in Appendix B, the authorized official can decide to perform parallel type A and type B assessments. The Department agrees that it has avoided a "garbage in garbage out" scenario, but disagrees that by doing this the Department has lost general applicability of the NRDAM/CME.

Marine mammals

One comment stated that the proposed NRDAM/CME deals with the problem of marine mammals by assuming that the only sea mammals impacted by spills are fur seals and sea otters, excluding from consideration such mammals as whales and dolphins.

The Department did not mean to imply in the proposed type A rule, and does not imply in this final regulation, that only fur seals and otters are impacted by incidents. However, the Department notes that information on toxicity from oil, and especially hazardous substances, to marine mammals is relatively scarce. The Department points out that three types of technical data are necessary for the inclusion of resources in the NRDAM/CME: toxicological data for oils and hazardous substances; biomass data; and economic valuation data. Due to the lack of data, sea otters were deemed to be outside the scope of this type A procedure.

Non-consumptive losses

One group of comments disagreed with the exclusion of non-consumptive losses. One of these comments stated that the proposed NRDAM/CME considers only a narrow definition of use value. Some comments stated that the trustee must have flexibility to address nonmarket values in those cases where the data is available at the time of the type A assessment. One comment stated that the proposed rule must allow the trustee agencies to augment the NRDAM/CME-derived use value with non-consumptive values to establish the final resource damage amount. One comment stated that the non-consumptive value of marine fauna requires the inclusion of these values in the damage assessment of spills.

The Department believes that these comments have misinterpreted the proposed regulation. The proposed, as well as the final, rule does consider non-consumptive use values. Specifically, the NRDAM/CME uses bird watching to value shorebirds. The Department has also incorporated nonmarket values where applicable and available, e.g., values for recreational fishing. In addition, the Department notes that marine fauna and flora are valued in the NRDAM/CME. The in place value of these organisms is determined by their contribution to the food web.

The Department points out that the use of these regulations confers upon the trustee a rebuttable presumption. Because of this, the Department believes that it cannot allow trustees to augment the damage claim with values that have not undergone the determination of "best available procedures." However, the Department notes that the use of this regulation is optional.

Another comment noted that coasts and estuaries are utilized for a great number of business and recreational purposes. This comment noted that the adverse economic impact to local and State economies resulting from a discharge or release is an example of a non-consumptive value that needs to be addressed in the final rule.

The Department agrees that coastal and marine areas are used for a great number of recreational and business purposes. The Department also agrees that discharges and releases may cause adverse economic impact to the economies of State or local governments. However, as stated in the preamble to the final type B rule, the Department does not believe that the natural resource damage provisions of CERCLA can be used to obtain compensation for direct harm to private businesses. In addition, the Department does not believe that the natural resource damage assessment provisions of CERCLA allow recovery of any "secondary" impacts associated with the discharge or release. As such, these economic impacts are not incorporated in this final type A rule.

Uses not valued

One group of comments dealt with uses not valued by the proposed NRDAM/CME. One of these comments stated that the quantification of biological injury to waterfowl should include non-consumptive use of game species. Other comments spoke of the use of resources as habitat for biological resources. One of these comments stated that the proposed NRDAM/CME only incorporates lost use values to the extent they relate to human use, and that losses associated with ecological degradation are totally ignored. Another comment stated that habitat values must be incorporated into the type A assessment, since the loss of available habitat kills as effectively as direct toxic effects. Finally, one comment objected to the fact that the proposed rule seems to imply that damages to private property are not included, ignoring the value of privately-owned habitat for publicly-owned fish and wildlife.

As specified in the preamble to the final type B rule, the Department notes that, by definition, use values refer to the values associated with the human use of resources. However, the Department disagrees with the comments' implication that habitat values are not incorporated in the NRDAM/CME. The NRDAM/CME incorporates these values through productivity factors. For example, many estuarine areas are more productive as habitat than are marine areas. As such, damages for the same discharge or release would, generally, be greater in

estuarine areas. This difference is due, primarily, to the value of the habitat for its productivity.

The Department notes that, as with the type B rule, private losses are not compensable under the natural resource damage provisions of CERCLA. The Department agrees that non-consumptive use values should apply to waterfowl, and has made this change in the final NRDAM/CME.

Discount rate

Several comments addressed the discount rate specified in the proposed rule. One comment noted that the 10 percent rate is generally perceived as being outdated by today's financial markets, while another stated that, compared to more recent theory and evidence, a 10 percent rate is high by over a factor of two. One comment noted that this 10 percent rate is rarely used now, especially in the environmental area, and is not justified here. Another comment pointed out that this rate has the effect of discounting future natural resource losses too heavily. This comment pointed out that a lower real discount rate would increase virtually all the values used to measure natural resource damages.

One comment pointed out that, while there is some controversy in the literature about the correct technique to use, the range of disagreement does not extend anywhere near a 10 percent figure. Another comment stated that the use of discount rates for long-lived consequences and the absurd results that follow from doing so have been demonstrated. One of the comments suggested that the Department should either revise the discount rate, or adjust the NRDAM/CME to accept the rate chosen by the authorized official, under guidance given in the rule. Finally, another comment stated that the OMB circular applies only to programs that commit the government to a series of measurable costs, and is irrelevant for choosing a discount rate to use for calculating compensation paid to the public for damage to natural resources.

The Department has maintained the use of the 10 percent rate in this final rule. The Department agrees that considerable uncertainty surrounds the selection of a discount rate and that the determination of "the" correct rate may be an impossible task. In addition, the Department agrees that the determination of a discount rate will substantially affect the damage amount. This is true under both the type B and type A regulations. However, the Department does not believe that it can allow the authorized official to select any discount rate since the result of the assessment is to receive a rebuttable presumption. As in the decision of discount rate for the type B rule, the OMB rate of 10 percent has been maintained after interagency consultation. The Department notes that OMB is currently reviewing Circular A-94, as revised, and may be revising this discount rate. If this occurs, the Department will review the 10 percent discount rate used in this final rule.

Beach closure

Many of the comments dealt with the issue of beach closings in the proposed rule. Several of these comments noted that the proposed NRDAM/CME assesses only those beaches that have been officially closed to the public as a result of the discharge or release, and does not account for reduced value to beach users when a beach area is left open, but may be affected aesthetically by the discharge or release. Some of these comments noted that, frequently, visitation to a public beach is reduced as the result of a spill, and that these incidents are far more frequent than incidents actually causing closure of the beach. This comment suggested that it is arbitrary to limit damages to the small minority of incidents where closure results. Some of these comments stated that the beach closure definition should include warnings issued by local authorities, as well as by Federal and State agencies, to limit recreational and other beach uses as the result of a discharge or release.

The Department agrees that reduced visitation rather than closure may result from some incidents, however, the NRDAM/CME is not designed to accommodate those types of situations. The Department believes that, for purposes of a type A assessment, the closure needs to be a complete closure. Impacts that are less clearcut cannot properly be assessed by use of the NRDAM/CME.

Beach use valuation

Several of the comments noted that the seasonal value for beach closings remains fixed at the value specified for the season in which the spill originally occurred, so that a beach closing for one year beginning in the summer will be valued at the summer rate for the entire 12 months. These comments pointed out that the use of most beaches for recreational and other purposes is a seasonal activity, therefore, the value placed on beach use for estimating damages should be directly proportional to the historic use patterns of a particular stretch of beach.

The Department agrees that the seasonal value of beach use should not remain fixed at the level determined by the date of the incident. The Department has modified the final NRDAM/CME so that damages for a beach closure are determined by using the appropriate seasonal values.

The comment also stated that, to avoid the need to inventory use patterns for every bit of United States coastal beaches, it should be possible to obtain general information on any particular beach when it is needed from the U.S. Fish and Wildlife Service, the National Park Service, or appropriate State agencies. The comment noted that, even without these adjustments, a closure in a time or at a location where there would be no usage, should result in no damage assessment. One other comment stated that beach closings in the proposed NRDAM/CME fail to reflect the availability of substitutes that directly bear on the valuation of "lost use."

The Department notes that the data base for beach visitation was derived from information obtained from the National Park Service, U.S. Fish and Wildlife Service, and the States. The NRDAM/CME takes seasonal visitation into account in determining damages and incorporates the fact that, if historical patterns indicate that visitation is low or nonexistent at a particular point in time, little or no damage amounts are calculated.

The Department agrees that ideally substitutability of beaches should be taken into account. However, as discussed below, it is impossible to incorporate this substitutability in the NRDAM/CME, which must have broad applicability.

One comment pointed out that, although the number of days of beach closure and the amount of beach closed are specified as input parameters to the proposed NRDAM/CME, the physical fates and biological effects submodels do not enter into the calculation at all, so that the most significant component of the assessment in terms of dollar value can be computed easily on a calculator from the number of days, the length closed, and the seasonal value per foot of beach area. This comment stated that several factors that have a significant influence on damages are left to the discretion of the authorized official and are input values to the NRDAM/CME. The comment objected that the inclusion of such items may lead one to believe they are computed by a complex model or calculation scheme, when, in fact, they are based upon the specification of simple parameters input directly into NRDAM/CME.

The Department did not intend to give the impression that the calculations for beach closure were an output of the physical fates or biological effects submodels. The Department has reviewed the schematic diagrams in the NRDAM/CME technical document and has changed them to remove the impression that beach damages require input from the physical fates or biological effects submodels. The Department notes that, as with the environmental parameters and all other inputs to the NRDAM/CME, the authorized official must document in the Assessment Plan the parameters used as an input to the NRDAM/CME for determining damages as a result of a beach closing.

Finally, some of the comments noted what they felt were to be anomalies in the proposed NRDAM/CME. One comment stated that, although § 11.41(c)(2)(iv) of the proposed rule [now (c)(1)(xii)] referred to the length of a beach in meters, the NRDAM/CME indicated that beach closure should be noted in kilometers. Another comment stated that, based upon test runs of the proposed NRDAM/CME, beach assessments showed the same cost for volumes ranging over increasing orders of magnitude from 10 to 100,000 relative to the chemical, the province, and the season.

The Department agrees that an inconsistency in units, meters versus kilometers, existed in the proposed NRDAM/CME. Section 11.41(c)(2)(iv) of the proposed rule correctly stated that beach length should be given in meters, while the proposed NRDAM/CME asked for the beach length in kilometers. This final rule, in § 11.41(c)(1)(xii), and the NRDAM/CME both require that beach closure be given in meters. The Department notes that the lack of seasonal variation mentioned by the comment is discussed above. However, the Department notes that per day damages resulting from a beach closure were, and continue to be, independent of the substance discharged or released. Variation due to substance would be determined by the length of time the beach is closed, an input supplied by the authorized official to the NRDAM/CME.

Fish values

Several comments related to the issue of using commercial prices to value the loss of fish. One comment pointed out that the proposed NRDAM/CME predicts the mass of fish that would have been harvested in the absence of a discharge or release and multiplies this by the market price for such species to determine the loss in societal value due to the spill. This comment noted that only commercial or recreationally-important species have measurable social value, and their value is best approximated by the market prices of the commercial species or willingness to pay for the opportunity to fish for recreational species, and that these are the values that are intended for reimbursement under CERCLA. Another comment stated that the values assigned to the biological organisms, especially fish and decapods, must be reviewed to determine whether the commercial value is an appropriate surrogate for the replacement value of these species. This comment pointed out that not all of the lost fish would have been harvested, therefore the commercial value may be too high.

The Department points out that the economic valuation techniques used in this type A procedure are consistent with the hierarchy of values specified in the type B regulation. As such, market prices and nonmarket valuations are used. However, the Department does believe that noncommercial and recreational organisms should be valued according to their contribution through the food web. The NRDAM/CME values these species accordingly. The Department believes that the public comment period has provided for a substantial review of all aspects of the NRDAM/CME and its data bases.

The Department believes that the comment addressing the appropriateness of values assigned to fishing losses as surrogates to replacement values has misinterpreted the intent of the proposed rule. The Department did not mean to imply that the values assigned to species in the NRDAM/CME were representative of replacement values. The values represent the in place use value of the species. Whether this value is similar to the species replacement value (cost) is not addressed in the rule. The Department notes that the NRDAM/CME does not incorporate the assumption that all species killed would have been harvested. Only that portion that would have been harvested in the absence of the discharge or release, based on historical fishing mortality rates, are included as damages in the NRDAM/CME.

Some comments stated that the assumption that natural resources have no value unless used commercially is wholly improper. One of these comments noted that the valuation of damaged biological resources does not accurately reflect the value that society should and does place on these resources because of the rigid adherence to market valuation and the inappropriate determination of that value. Another comment stated that the complete utilization of a resource in the future is possible and, therefore, the damages should be based on that circumstance.

The Department notes that both commercial and recreational uses are valued in the NRDAM/CME. The Department further notes that use values are determined by the human uses of the resource in question. Market prices and the nonmarket methodologies used in the studies cited in the NRDAM/CME technical document do reflect society's judgment on the value of a resource. If, by complete utilization of the resource, the comment referred to the depletion of the resource, the Department agrees that this is possible in the future. However, the price or nonmarket value of the resource should reflect the growing scarcity of that resource. As the data bases of the NRDAM/CME are updated, changes in both the economic and the biological data bases should reflect the changing trends in resource availability.

Other comments were concerned with the period of time considered by the NRDAM/CME in the closing of a fishing area. One comment noted that the reduced catch must be compared with at least the previous one-year period and be related to the season during which the discharge or release occurred. Another comment suggested that the Department should advise trustees that fishing areas may be closed for too long a period of time, as well as too short a period of time, and that careful examination must be made of the factual determination of the official responsible for the closure. On the same issue, another comment stated that the length of time a fishing area is closed may not reflect the amount of time in which damages have occurred.

The Department notes that the NRDAM/CME computes catch loss based on historical patterns of fishing mortality, both commercial and recreational. The instantaneous fishing mortality rate, F, is a function of previous years' catch data. The Department agrees with the comment that stated that the length of time that a fishing area is closed should be a direct function of the length of time that the effects of the discharge or release continue. The Department notes that § 11.41(f)(2) states that the "amount of area closed to fishing, and the length of time the area is closed to fishing *due to the discharge or release* [emphasis added]" is the required input to the NRDAM/CME. Given this restriction on the area involved and time period, the

Department does not believe that further guidance in this area is required.

The Department notes that, in general, the length of time of a closure should approximate the time required for the injured resource to recover. However, the Department acknowledges that in some instances changes in demand and supply, after the removal of the closure, could ameliorate or lessen damages. To incorporate this phenomenon in the NRDAM/CME would take far more data and forecasting ability than is currently available. Because of this, the Department has not incorporated these factors into the final rule.

Miscellaneous

Several of the comments dealt with certain specific items in the economic damages submodel. One comment noted that expressing the lost catch of finfish in general categories of fish species in the proposed NRDAM/CME is a reasonable way of aggregating and averaging many different kinds of losses and dollar values among different species of fish. Another comment questioned the proposed NRDAM/CME's measurement of damages to non-commercial, lower trophic biota, given the Department's statement of the tenuous connection between lower trophic biota and the established markets that would be used to provide a monetary measure of damages.

The Department agrees with the comment noting the reasonableness of the level of aggregation and has kept this level in the final NRDAM/CME. The Department believes that losses through the food web are a valid way to assess damages for injury to lower trophic biota and that the food web used in the NRDAM/CME is reasonable and is adequately documented in the NRDAM/CME technical document.

2. Data Bases

a. PHYSCHEM Data Base. Many of the comments received on the PHYSCHEM data base had specific questions concerning the values and factors within that data base. Some of these questions had to do with such things as sedimentation rates of dissolved and particulate oil, partition coefficients for oil, vapor pressures and degradability rates, solubility, degradability, threshold concentration, vapor pressure, volatile fractions, miscibility, and KOW, KOC, LC50, and BCF values.

One comment also was concerned that the toxicity values are suspect where those toxicity values exceed solubility or where the LC50 values for various groups of organisms are all identical. Other comments felt that the Department's principal reliance on OHMTADS does not assure adequate data base reliability. They stated that, while OHMTADS is one of the most comprehensive chemical data bases available, it is primarily a collection of relatively unevaluated data. One comment noted that, for some compounds, OHMTADS only contains qualitative data on solubility, but that the Department interprets these descriptors quantitatively. The comment suggested that this assumption should at least be documented prior to use of the NRDAM/CME. The comment suggested that a casual observation of OHMTADS can reveal significant errors, noting that some data are based on a single 1948 study that did not measure lethal concentrations, but measured sublethal toxic effects using improper methods, resulting in clearly understated LC50 value. The comment suggested that the Department should consider whether there are more appropriate alternate data sources or estimation procedures that could be used. The comment noted that the Department should compare the data sources for all major chemicals in the data base to assure collection of best available data. Finally, one comment suggested that the Department should list all CAS numbers in a one-page table to provide a quick overview of chemicals for which data are provided and their CAS numbers.

The Department notes that the entire PHYSCHEM data base has been reviewed and new information has been incorporated where available. An additional source of toxicity data has been included in the PHYSCHEM data base, the AQUIRE: Aquatic Information Retrieval Toxicity Data Base, developed by the EPA, Environmental Research Laboratory, Duluth, MN. The AQUIRE data base contains more information, is up to date (1986), and is quality-controlled. Therefore, toxicity values from AQUIRE were used when available. OHMTADS data were only used when no other source of information was available, i.e., there was no information in AQUIRE and literature sources were not found. When OHMTADS data were used, only those for acute toxicity tests measuring mortality (LC50) or growth rate (EC50) were used. Thus, the current values for toxicity in the PHYSCHEM data base are considered by the Department to represent the best available information. The Department also notes that a list of all CAS numbers was, and continues to be, provided in the NRDAM/CME technical document.

Another comment expressed the concern that there is a lack of discrimination between dissolved and particulate oil as to such things as toxicity. Another stated that it is not clear as to what KOW means for an oil mixture, or how it is used in the various calculations.

The Department points out that KOW is no longer explicitly used in the NRDAM/CME. Both the proposed and final NRDAM/CME discriminate between dissolved and particulate oil. Further discussion of these issues may be found in the NRDAM/CME technical document.

User input

Some comments felt strongly that there should be no changes in the data base by the authorized official or any other participants in the application of the NRDAM/CME. One of these comments stated that no authorized official should be permitted to change any data base in the NRDAM/CME and still obtain the rebuttable presumption for the damage assessment derived through this assessment procedure. Other comments stated that any updating of any of the data bases of the NRDAM/CME must be accomplished by the Department pursuant to an informal rulemaking under the Administrative Procedure Act so that interested parties have the opportunity to participate, on the record, in any change in the basis for the NRDAM/CME's underlying values.

Another group of comments felt that the NRDAM/CME's inflexibility with regard to the data base is misguided. These comments urged the Department to build into the NRDAM/CME the ability to input more accurate data on the chemical parameters for the substance of concern at the time the NRDAM/CME is applied to avoid possible use of incorrect data. They pointed out that, since accurate and reliable damage assessments will depend heavily upon input from the data base, the knowing use of inaccurate data cannot be justified; therefore, the Department should incorporate a mechanism for interactively updating the chemical data base with site-specific information. They agreed that, where it is difficult to define precise values for some of the parameters, then estimated default values should be used, but that the NRDAM/CME should allow modification of this data, as is allowed for the environmental data.

These comments noted that any party wishing to alter or substitute information in the data base could be required to justify any deviation from the established data as part of the decision record in the Assessment Plan. Finally, they stated that incorporation of an interactive data replacement process

would also ease NRDAM/CME validation and testing, and would facilitate the rulemaking process by making it unnecessary to conduct frequent rulemakings simply to update the data base.

The Department agrees that no input to the PHYSCHEM data base should be permitted. The results of this type A assessment will be accorded a rebuttable presumption, therefore, data that have not been reviewed should not be used in the NRDAM/CME. The Department also agrees that any future Departmental changes in any data base are subject to the Administrative Procedure Act, since the NRDAM/CME and its data bases are incorporated by reference in this final rule. Therefore, the public is assured that interested parties will be provided an opportunity to comment on any proposed changes.

Solubility

Some comments suggested that the Department should provide greater justification for the solubility assumptions. One comment noted that, in many cases, the data used in the NRDAM/CME appear to be out of date or simply wrong, particularly many of the solubility values and toxicity values. This comment stated that variations in solubility can make a significant difference in the NRDAM/CME's assessment process, particularly for smaller spills. Finally, the comment urged that a comprehensive review of the data base and documentation of the source of the values are needed.

The Department points out that some chemicals have solubilities different from the literature data because the chemical data base used "salt water solubilities" whenever they were available. These salt water solubility data differ from the fresh water solubility data cited in most published articles.

Some comments made specific references to the values contained in the data base. One pointed out that the solubilities for all the various crude oils are identical, though it is intuitively obvious that light and heavy crudes will behave very differently. Another stated that, while the insoluble number may be appropriate, in the absence of other information and based upon past experience, the "totally soluble" number should be placed at 1×10^{5} mg/1.

The Department notes that the assigned solubilities (1×10^{-6} ppm for "insoluble" and 1×10^{6} ppm for "totally soluble") have been replaced by measured or estimated numbers from the EPA-Duluth Lab QSAR Database or from published sources. For a completely soluble substance (e.g., ethyl alcohol), a 1:1 solubility (i.e., 106 mg/1) appears to be a reasonable upper bound.

Toxicity data

Several comments raised concerns as to the toxicity data for the chemicals in the data base. One comment stated that the manner in which toxicity data were obtained is questionable. Of specific concern was the use of laboratory-derived toxicity values to predict impacts to fisheries. The comment stated that the many environmental variables that alter the toxicity of oil or other substances in the field are not accounted for when conducting tests in the laboratory. The comment stated that such laboratory results simply cannot be equated to actual effects in the marine environment.

The Department points out that, while toxicity results obtained in laboratory and field tests may not always agree, not enough quantitative information from field studies is available to develop a "simple" model that could be used for the type A rule. The NRDAM/CME must, of necessity, apply to chemicals spilled in a wide variety of environments. Since field toxicity information is both chemical- and site-specific, the amount of information required to develop a NRDAM/CME based on field information is both prohibitive and, in any case, unavailable. The acute toxicity test represents a useful compromise (see Hansen, D.J., 1984).

It was also questioned whether these values are based upon fresh water or salt water species. The Department notes that the LC50 and EC50 values in the PHYSCHEM data base are for salt water tests, if available, and for fresh water tests otherwise.

Another comment pointed out that, although incorporation of species- and chemical-specific values is probably too detailed an approach for the type A rule, the NRDAM/CME should recognize this source of variation in some manner. The Department agrees with this comment, and notes that data variability has been incorporated in the point estimate of species category toxicity levels by the use of a geometric average, as discussed in the NRDAM/CME technical document.

Several comments identified what they considered to be weaknesses in the use of LC50 values. One comment noted that LC50 data are good only for determining relative toxicity of various substances under the same conditions as those of the test. Another comment stated that, while an LC50 value and a threshold concentration may have use in estimating mortality of fish, decapods, etc., extrapolation of these values may not be useful in dealing with other organisms. Finally, one comment noted that, in test runs of the proposed NRDAM/CME, the assessment values did not change when the LC50 values were changed.

Other comments voiced objections to the methods of deriving the LC50 values used in the data base. One comment noted that, where data are available for more than one member of a species category, a geometric mean of the different LC50 values was estimated and that mean value was then assigned to the whole species. This comment stated that this method assumes that all fish react similarly to a toxin, a highly doubtful proposition and one that has been shown to be not so in certain cases. Another comment noted that when LC50 values were not available for a particular species category, the NRDAM/CME used a rule of thumb to extrapolate from "known" LC50 values for other species categories. The comment stated that these extrapolations were based upon just a few comparisons of LC50 values for different species categories where they existed, but that there is no real physiological basis for these extrapolations. Finally, another comment stated that the selection of low values to predict marine organism mortality in the NRDAM/CME has no basis in fact.

The Department notes that the methods for deriving the toxicity values in the data base are outlined in detail in Section IV of the revised NRDAM/CME technical document and summarized here. While species-specific differences in toxicity do exist, not enough toxicity information is available for most chemicals to allow insertion of toxicity information for each species category in the NRDAM/CME. Therefore, an average value for each of the following categories was used: fish (LC50), invertebrates (benthic, LC50), larvae of fish and invertebrates (LC50), zooplankton (EC50 for growth), and phytoplankton (EC50 for growth). The Department has, wherever possible, matched the appropriate LC50 data for the correct species groups. Only when insufficient toxicity data existed for a particular substance/species category did the Department extrapolate data from fish LC50 data. This procedure and the reasonableness of such extrapolation are documented in the NRDAM/CME technical document.

Data sources for toxicity information were as follows, in order of priority: referenced journals and texts, salt water toxicities; AQUIRE: Aquatic Information Retrieval Toxicity Data Base (EPA,

Environmental Research Laboratory, Duluth, MN), salt water acute toxicity tests; AQUIRE fresh water acute toxicity tests; OHMTADS (Oil and Hazardous Materials Technical Assistance Data System, U.S. EPA) salt water acute toxicity tests; OHMTADS, fresh water acute toxicity tests; EPA, Environmental Research Laboratory, Duluth, MN, predicted toxicity based on a structure-activity analysis model (QSAR). Only data of the highest precedence available were used. Toxicity data were standardized to 96 hours exposure time, assuming a linear relationship between the log of concentration and log of time of exposure suggested by J.B. Sprague (Water Research, 1969). Toxicity data were also standardized to 25 °C, based on the relationship developed by F.L. Mayer and M.R. Ellersieck (1986). The geometric mean value was used where multiple toxicity values were available, since the distribution of mortalities at a given concentration is log-normal (e.g., D.J. Finney, 1971). Where toxicities were not available for certain species categories, toxicities were estimated from known categories using empirical ratios derived from the AQUIRE salt water data, where toxicity information exists for all categories. The resulting toxicity data represents the best available estimate of mean toxicity, i.e., which represents toxicity of a species and individual of average sensitivity.

One comment stated that the Department's use of LC50 data to estimate impacts over time requires further justification. This comment noted that the Department assumes an essentially linear relationship for mortality over both time and concentration using LC50 values with no discussion of whether these assumptions are biologically sensible. The comment stated that these assumptions do not consider the time a fish would actually be exposed to a toxic substance in a real world situation.

The Department notes that, in the biological effects submodel, the 96-hour LC50 value in the data base is corrected to ambient temperature and for time of exposure using the relationships cited above, rather than assuming a linear relationship between time of exposure and mortality as was assumed in the proposed NRDAM/CME. A number of comments had pointed out that the linear model was a weakness in the NRDAM/CME and this improvement remedies that problem. In addition, the Department notes that exposure time, based on entrainment and migration velocities, has been incorporated in the NRDAM/CME.

One comment added that discharges of oil are unlikely to cause significant decreases in phytoplankton productivity over any reasonable period of time; therefore, use of the EC50 will overestimate the injury to such organisms. The Department disagrees and notes that negative effects to phytoplankton productivity have been observed (National Research Council, 1985).

One comment stated that the acute toxicity threshold for petroleum hydrocarbons, as stated in the data base, is wrong. Finally, another comment noted that the LC50 values for phytoplankton and zooplankton should be EC50 values.

The Department notes that the toxicity values used for petroleum hydrocarbons have been reviewed and new values based on Rice, et al. (1979), have been inserted into the data base. These values are based on more complete information than the values used in the proposed NRDAM/CME. The Department agrees that injury to phytoplankton and zooplankton is generally measured by EC50 values rather than LC50 values. The Department notes that this change in nomenclature has been made in the NRDAM/CME technical document.

Chemical degradation

One comment strongly supported the use of chemical degradation in evaluating the fate of discharged or released substances, but stated that the persistence data found in the proposed NRDAM/CME are quite imprecise and generally much too conservative. The comment noted that the Department apparently derived its numerical persistence data only from the qualitative descriptors "persistent," "degrades slowly," and "degrades rapidly" from OHMTADS and that these qualitative descriptions were then translated into half-lifes of 20 years, 5 years, and 6 months, respectively. The comment stated that this derivation is much too conservative.

The Department notes that all degradation rates have been revised as the sum of the biodegradation plus the hydrolysis rate. The assigned numerical data for half-life are: non-persistent—0.2 days; slightly persistent—4.37 days; persistent—36.5 days; highly persistent—997.0 days (< 2.73 years); and non-degradable—73,000 days (200 years). These numbers were obtained by plotting the five categories of substances with their corresponding measured half-lives. A total of 26 substances were included in the analysis. The Department points out that the hydrolysis half-lives have been obtained from the Duluth Lab Database: 1 day, 15 days, 38 days, 50 days, 190 days, and 400 days are assigned to chemicals from very water-reactive chemicals to non-water-reactive chemicals. Further details on this procedure can be found in Section IV of the NRDAM/CME technical document.

Partition coefficients

One comment noted that the Department derived its octanol/water partition coefficients from a series of regression relationships, found in the literature, between solubility and octanol/water partitioning, and then extended these literature relationships for certain chemicals to all other chemicals based upon a chemical classification system. The comment stated that this procedure is not the "best available" and ignores potentially valuable information sources that may contain more complete, better data, such as the methods of Leo and Hansch and the data base of "Log P Data Base." The comment noted that the Leo and Hansch methods are based on molecular structure, physical properties such as boiling and melting points, and other information readily available to the Department and suggested that the "Log P Data Base" contains octanol/water partition coefficients calculated using more accurate methods.

The Department notes that the octanol-water partition coefficients are no longer used, and have been removed from the data base. The "Log P Data Base" or QSAR data base has been used for adsorbed-dissolved partition coefficients, KOC.

b. Biological Data Base.

User input

Many of the comments dealt with the issue of authorized official input into the biological data base. Some of the comments noted that the type A assessment must consider available site-specific data, since there may be circumstances under which the authorized official would wish to override the standardized values with better data at hand. One comment noted that ready access to these data would also aid in interpretation of the results of the NRDAM/CME. Another comment stated that, if more appropriate information on specific organisms in an area is documented and available, the trustee and potentially responsible party should be allowed to petition for its use. Another suggested that the authorized official should be able to inspect the default values assumed by the NRDAM/CME, and to override specific values, or even add data for additional species.

Other comments made specific suggestions as to where such input would be useful. One comment suggested that the Department should incorporate simple adjustments to its biomass data to reflect different biomass densities from those reflected in the data base.

Another line of thought on this issue, however, was that, given the large number of data points involved, the NRDAM/CME should not be modified to accept alternative data. Instead, one comment suggested that a habitat classification scheme might be used to identify a multiplicative factor that would adjust biomass data when the specific spill site differs significantly from the typical area from which biomass data were drawn. This comment expressed a concern that many discharges or releases are likely to occur in areas of frequent spills that may already display reduced biological populations. To deal with this situation, the comment suggested that the trustee could be required to classify the biomass in the affected area as "normally abundant," "significantly overabundant," and "significantly underabundant," and that the model could then use current biomass data multipled by a simple, appropriate factor depending upon the classification to arrive at a result.

The Department agrees with the comment stating that modifications should not be allowed to the data bases. The final NRDAM/CME does not allow substitutions to be made to the biomass data or the trophic level toxicity values. The Department believes that the biological data base contained in the final NRDAM/CME is representative of the average standing stock biomass for the various respective ecological systems of the coastal and marine environments, and that the toxicity values for the different trophic levels are appropriately based on the geometric mean of the toxicity values for the species comprising these trophic levels. The use of these average values is consistent with the data requirements of a "simplified procedure" that is applicable to all coastal and marine environments. The Department notes also that results of assessments performed using this final rule are accorded a rebuttable presumption. The substitution of data that has not been reviewed and made available for public comment is, therefore, not allowed in this simplified procedure.

The Department considers the use of multiplier factors to describe biomass abundance in the affected area to be subjective. Such multiplier factors have not been included in the final NRDAM/CME. The Department points out, however, that a type B assessment may be performed by the authorized official or requested by the potentially responsible party in instances where the estimated quantity of biological resources potentially injured is expected to differ significantly from the average biomass listed in the NRDAM/CME technical document.

Province divisions

One comment expressed concern with the use of the provinces contained within the data base. This comment stated that the *Cowardin* province boundaries used in the proposed model do not conform to standard marine biogeographic divisions as presented in Hedgpeth and Briggs. The comment noted that, generally, province boundaries should not be used to determine marine biogeographic regions, and, instead, suggested that the model cite standard marine biogeographic literature. The comment felt that such an alternative is necessary because the trustee needs the flexibility to select the proximate province, when appropriate, to conform with local differences. Another comment noted a concern with lumping all the area above the Aleutian Islands into a single province, given the diversity of biota in the Southern Bering Sea area. This comment suggested that the Department should divide this province into two or re-draw the Fjord province further north to encompass the southern half of the Bering Sea.

The Department notes that, as is clear from the scientific literature, there are no "standard" marine biogeographic divisions. Several schemes exist, largely reflecting the different taxa used for determination. The scheme used in *Cowardin* clearly incorporates consideration of biotic communities and species composition for classifying the divisions. Furthermore, *Cowardin* is consistent with the systems used by NOAA in the Estuarine Sanctuary Guidelines, which also was based on plant and animal distribution, and the National Estuarine Pollution Study of 1970 in the use of Cape Mendocino rather than Point Conception as the primary division on the Pacific coast. The system received widespread review and comment at the time of development of both *Cowardin* as well as NOAA's Estuarine Sanctuary Regulations. The issue of Point Conception versus Cape Mendocino received specific attention in 1974 when NOAA adopted the Estuarine Sanctuary Regulations and was reviewed by Hedgpeth, among others, who concurred with the use of Cape Mendocino. The Department recognizes that the southwestern boundary of the Louisiana division is often considered to extend into Mexico, but the *Cowardin* decision was made based on the extent of hypersaline lagoons, which have a substantial impact on the biota as well as the circulation of hazardous wastes. Because all zoogeographic classifications have some degree of arbitrariness and because *Cowardin* has received widespread scientific review and use and is generally consistent with NOAA's Estuarine Sanctuary Regulations and the system used in the National Estuarine Pollution Study, the Department will continue to use it.

Estuarine environments

One comment stated that estuarine environments do not have to be so deep as provided in the NRDAM/CME but that many are shallow, for example, less than five feet. The Department did not mean to imply in the proposed NRDAM/CME that either estuarine or marine environments had specified depths. The Department notes that all of the required environmental parameters no longer have default values, which were placed in the proposed NRDAM/CME to facilitate public evaluation. Therefore, actual depth for all environments, among other parameters, is now required to apply the NRDAM/CME.

Species list

One comment objected that important commercial food species, such as bay scallops, and commercial bait species, are omitted, salt marsh epifauna are overlooked, and that organisms present in intertidal areas when the tide is high are ignored. This comment also stated that several species are placed in the wrong habitats or omitted from the correct ones, e.g., hard and soft clams are not found on rocky bottoms.

The Department notes that the biological data base has been thoroughly reviewed to check for errors and omissions. Bay scallops have now been included where appropriate by province and habitat. Bait species are omitted because of inadequate abundance data. All salt marsh fauna of commercial value are included, as are species present in the intertidal area at high tide. Clams and scallops have been removed from rocky bottom habitats, and several other mollusk and fish species have been added to or deleted from various habitats where appropriate.

c. Economic Data Base.

User input

Some of the comments on the proposed rule stated that the NRDAM/CME should be modified to allow authorized official input into the economic data base. One comment suggested that trustee agencies should be allowed the flexibility to specify cost-effective restoration costs instead of the loss-of-use values generated by the proposed NRDAM/CME in those cases where data are available at the time of the type A investigation. Another felt that there must be some means for trustee agencies to supplement the valuation estimate with appropriate nonconsumptive use values, stating that the trustee agency is the best judge of the nature and amount of these additional resource values. One comment pointed out that even minimal changes in the data base can significantly increase the amount of damages assessed.

For the reasons stated in the response to comments on the other data bases, the Department has determined that no modifications will be allowed in the economic data base.

Beach valuation data

Some of the comments spoke specifically to the studies used in deriving the beach valuation data. One comment expressed concern about the use of the results of the study of one beach to extrapolate to another, perhaps very different kind of beach. Another comment noted that, in studies relied upon in the NRDAM/CME, the utility of the results were recognized to be very limited due to the site-specific nature of the data used to derive the estimates. This comment stated that it is questionable whether the figures on beach closings generated from such a limited number of regional studies can be applied nationwide, and suggested that, because of this limitation, only conservative values should be used. One comment suggested that the six studies used by the Department cannot be weighted equally. This comment noted that some of the studies require extensive extrapolation to be applicable to generic spill situations and some of the methods used in other studies can give questionable results. The comment noted that presenting only one value for a study that has highly variable results may oversimplify that study. Specifically, the comment noted that Bell and Leeworthy estimated the value of all Florida beaches, so the cost of closing a beach derived from the figure would not correctly consider the fact that individuals often have the option of substituting a nearby beach for one that may be closed. Consideration of substitution would result in considerably lower benefit estimates, because the cost to individuals of visiting a nearby alternative beach are considerably less than the cost of forgoing a beach visit. The comment also noted that McConnell and Weaver employed a contingent valuation method that is highly susceptible to starting point bias, since cues were provided as part of bid elicitation. Also, the comment stated that Meta System-EPA used a complex model, dependent upon many assumptions that could have greatly influenced the results. The comment continued that McConnell and Weaver looked at two model specifications that can give very different results, that the use of one value could misrepresent the study's results, thus the use of one set of generic values could be very misleading. Finally, one other comment suggested that the Brown and Hammack study did not address the extent to which visits are influenced by weather, seasonality, and the number of weekend days per month, which could affect the visit rate.

The Department agrees that the use of an average beach value derived from the results contained in several studies is an approximation of the value of recreation on any specific public beach. As with all other components of the NRDAM/CME, average values were required, so that the NRDAM/CME would have general applicability.

The Department notes that an extensive search of the literature was performed in preparing the draft NRDAM/CME technical document. This search found only seven studies appropriate for consideration in the determination of an average value for beach use. The Department continued this search, based on comments received, and was able to identify only two additional studies appropriate for consideration. The Department believes that these nine studies provide the best available information on the valuation of salt water beach use. These studies give values for beach use in several different regions of the country, thereby giving rise to a representative average value for the country as a whole. A brief review of all studies considered can be found in the NRDAM/CME technical document.

The Department also notes that all of the studies were given equal weight. While there may be biases in the different studies, the development of a set of unequal weights for the construction of a National average to attempt to correct for any perceived biases would present even more problems than the use of a simple average. For example, what is the standard value that the study values should be adjusted to? For this and other reasons, the Department has maintained the use of a simple average in the final NRDAM/CME technical document.

The Department acknowledged in the draft NRDAM/CME technical document that the value for the closure of a beach did not incorporate the potential substitutability of beaches, or substitute recreational activities in general. In order to incorporate this aspect of beach use, a much larger set of information would be required as an input to the NRDAM/CME. Such information would concern not only the existence of substitute public beaches, but also the availability of those beaches for use. Much of this increased information would have been subjective in nature, e.g., the quality of the potential substitute beach area, and consequently not readily subject to replication by the public. Because use of this final rule grants to the trustee a rebuttable presumption to assessments performed pursuant to its procedure, the Department determined that use of this type of information should be minimized whenever possible. To this end, the inclusion of substitutability of beaches in the determination of a representative beach value for the final NRDAM/CME was not considered possible.

Fur seals

One comment stated that the $15 value on fur seals is unacceptable, obviously ignores the statutory replacement cost requirement, and fails to take account of the value of the seal in the nonmarket context. The Department disagrees that the value of fur seals is inappropriate. A complete discussion of the valuation technique is discussed in the NRDAM/CME technical document. The value assigned for the fur seal follows the hierarchy established in the type B regulation, and has not been changed in this final rule.

C. Summary of Major Changes to the Rule

What follows is a summary of the major changes to the type A rule made between the proposed rule and this final rule. These changes to the rule, in the most part, are the result of extensive and detailed comments received during the public comment period. Some changes in the rule reflect technical editorial changes or refinements to the NRDAM/CME resulting from public comments.

Subpart A—Introduction

Section 11.15 Actions Against the Responsible Party for Damages.

In the proposed rule, § 11.15(a)(1)(iii) prohibited the combination of a type A procedure and a type B procedure in the determination of the damage amount under this Part. That language has been changed in this final rule to allow for parallel type A and type B assessments, in certain cases, to determine damages resulting from a single discharge or release. A parallel type B assessment is allowed for those natural resources not covered by the NRDAM/CME. These parallel assessments are allowed so long as the determination will not result in double counting of damages. It is noted, however, that this section does not permit a combination of type A and type B procedures in one assessment, but that there would be separate, parallel assessments for separate resources injured by a single incident.

The proposed § 11.15(b), pertaining to Clean Water Act actions, has been deleted. This proposed amendment is unnecessary as the CWA actions were incorporated into this section of the final type B rule.

Section 11.18 Incorporation by reference.

This final rule adds new language to expressly incorporate by reference the technical document, "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments" (NRDAM/CME technical document), which contains the NRDAM/CME computer model, into the rule, and to state that the NRDAM/CME technical document will be available after June 2, 1987, from the National Technical Information Service, Department of Commerce.

Section 11.19 Information Collection.

A new § 11.19 has been added to reflect that the information collection requirement contained in § 11.41(c) has been approved by the Office of Management and Budget. The required information will be collected to complete the type A Assessment Plan necessary to carry out the type A assessment in order to receive the rebuttable presumption.

Subpart C—Assessment Plan Phase

Section 11.31 Assessment Plan—content.

Section 11.31(d) has been revised to clarify that, when a type A assessment is performed, the Assessment Plan shall identify and document all the information specified in Subpart D of the rule.

Section 11.33 Deciding between a type A and a type B assessment.

Section 11.33 has been revised to add a new paragraph (a) to provide the general directive that the authorized official must select between a type A or type B assessment procedure.

Section 11.33(a)(1) [now (b)(1)], listing the conditions to use in determining the appropriateness of performing a type A assessment procedure, has been revised: (1) To delete special resources from this section, in accordance with the August 1, 1986, final rule; (2) to clarify that the resources listed in Appendix B of the NRDAM/CME technical document are biological resources, so that a parallel type B assessment may be performed for separate resources or biological species not covered by the NRDAM/CME; (3) to add "season" to the criteria relating to biological resources; (4) to delete the word "relatively" from the phrase "relatively minor;" (5) to separate the injury to biological resources due to mortality from damages due to closure of a fishing area; (6) to separate from the injury to biological resources damages due to the closure of a beach area; (7) to include damages due to the closure of a hunting area; (8) to allow an assessment to be performed for that portion of an incident in which the discharge or release originated outside the coastal or marine environment and then entered the coastal or marine environment; (9) to include "management actions" as actions used in a cleanup; (10) to change "at the water surface or in the intertidal zone" to "at or near the water surface of the coastal or marine environment or in the intertidal area;" (11) to include as a criterion that the discharge or release would not be expected to cause a significant change in the prices listed in Appendix F of the NRDAM/CME technical document; and (12) to include as a criterion that the estimated injury to biological resources due to the discharge or release is not expected to have been primarily due to exposure through the air pathway.

Section 11.33(a)(2) [now (b)(2)] has been revised: (1) To change the reference to the NRDAM/CME to a type A procedure of § 11.41; (2) to provide for the advancement of assessment costs by the potentially responsible party, within a time frame acceptable to the authorized official, upon the request for a type B assessment and for documentation to be provided by the potentially responsible party stating the reasons for requesting a type B assessment; (3) to require that the authorized official's decision for selection of either type A procedure or type B procedure be based on the reasonable cost and cost-effectiveness criteria; and (4) to clarify that documentation of the authorized official's choice between a type A procedure or a type B procedure be included in the Assessment Plan.

A new § 11.33(a)(3) has been added to provide that, if there is disagreement among potentially responsible parties as to a request for a type B assessment, the authorized official shall make the determination.

Section 11.33(a)(2)(ii) [now (b)(4)] has been revised to reiterate that, in the event that there is no confirmation of exposure in the type B assessment being carried out, there is no option to subsequently go back and perform a type A assessment for that injury.

Subpart D—Type A Assessments

Section 11.40 Type A assessments—general.

Section 11.40 has been revised: (1) To delete all specific reference to the NRDAM/CME and to include only language general in nature applicable to all type A procedures within Subpart D; (2) to clarify that the Report of Assessment shall be prepared after a type A assessment is completed; and (3) to specify that the reasonable and necessary assessment costs associated with a type A procedure may be claimed by the authorized official.

Section 11.41 Coastal and marine environments.

Section 11.41(a) has been revised: (1) To explicitly incorporate the NRDAM/CME by reference for use as a simplified assessment procedure for coastal and marine environments; (2) to clarify that the Report of Assessment for the type A assessment shall include the printed output of the application(s) of the NRDAM/CME, documentation of each determination made in Subparts B, C, and D, and the documentation of the data inputs used in the application(s) of the NRDAM/CME; and (3) to delete (a)(2), since the availability of the NRDAM/CME is fully described in § 11.18 of this final rule.

Section 11.41(b), listing the definitions to be used in Subpart D of the rule, has been revised: (1) To delete the definition of "affected area," since the term is no longer used in this final rule because the NRDAM/CME determines the area affected in both discharges of oil and releases of hazardous substances, (2) to insert, in the definition of "closure of a beach," the word "public" before the word "beach" and before the word "use" to clarify that only public beaches

and public uses are included in the type A rule; (3) to revise the definition of "closure of a fishing area" to delete the word "health" before the term "agency," to clarify that any appropriate Federal or State agency can direct the closure of a fishing area; (4) to revise the definition of "marine environment" to include the Exclusive Economic Zone; (5) to add the definition of "Closure of a hunting area;" and (6) to change the number twelve to thirteen in the definition of "species category" to reflect an increase in the number of species categories considered by the NRDAM/CME.

Section 11.41(c), has been revised: (1) To clarify that the listed items be documented in the Assessment Plan and used as input to the NRDAM/CME and to combine all the items into one section; (2) to clarify that the CAS numbers to be used are those provided in Appendix C of the NRDAM/CME technical document; (3) to add as an input the implicit price deflator for the Gross National Product, as specified in the *Survey of Current Business;* (4) to include, in the cleanup description, the time and amount of material removed from the sea surface, water column, or the sediment; (5) to include in the fishing area closure the fact that closure of a fishing area can be species category-specific; (6) to include the closure of a hunting area; (7) to change in the beach closure data the phrase "recreational" to "public;" (8) to require that certain environmental parameters must be supplied by the authorized official rather than using default parameters, and that historical or reference data may be used to establish the environmental parameters; (9) to combine in some cases the measurements of upper and lower water depth; (10) to reorder some paragraphs to more clearly show where the various steps in the assessment process occur, by moving the requirements in the proposed rule of § 11.41(d) (5), (6), and (7), relating to the time and location of the incident, the identity of the substance discharged or released, and the results of any cleanup carried out, to clarify that these data are to be included in the Assessment Plan prior to the application of the NRDAM/CME; (11) to delete the documentation of water temperature, since the final NRDAM/CME contains reliable information for this parameter; (12) to add guidelines for assessing damages for discharges or releases that might occur outside the coastal and marine environment and then enter the coastal or marine environment; and (13) to state that the date of the incident is required, rather than the month and year.

Section 11.41(d)(2)(iii), was revised to reflect that default values are provided by the NRDAM/CME only for a limited number of environmental parameters.

Section 11.41(e) has been revised: (1) To reflect that "season" is included within the description of information contained in the biological data base; (2) to include indirect lethal effects to waterfowl, seabirds, shorebirds, and fur seals in the possible injury determination; (3) to redefine the guidelines for assessing damages to the intertidal area in multiple applications of the NRDAM/CME; (4) to clarify the guidelines for other multiple applications of the NRDAM/CME to account for migration of the substance within an environment or province; and (5) to set the number of times the NRDAM/CME may be reapplied to determine the total damage amount.

Section 11.41(f) has been revised: (1) To include seabirds in those resources for which damages are calculated; (2) to include indirect lethal effects to waterfowl, shorebirds, seabirds, and fur seals in the possible damage determination; (3) to state that closure of a fishing area may be species-category specific; (4) to delete the term "solely" from the estimation of damages to a fishing area and beach area resulting from a discharge or release; (5) to include damages for closure of a hunting area; (6) to include the type of beach closed in the estimation of damages for beach closure; (7) to add a requirement that fishing and hunting area closures be supported by sampling or analysis; and (8) to require for fishing, hunting, and beach closures that the link between the discharge or release and the closure be documented in the Assessment Plan.

Section 11.41(g) has been revised: (1) To state that the version of the NRDAM/CME to be used for assessing damages to coastal and marine environments is version 1.1, incorporated by reference in this final rule; (2) to delete the reference to alterations, substitutions, additions, or deletions for the data bases in the NRDAM/CME authorized by this Subpart, as none are authorized in the final rule; (3) to change the names and number of the computer disks containing the NRDAM/CME, to conform to the final NRDAM/CME; and (4) to change the reference to "responsible party" to "potentially responsible party."

Subpart F—Post-Assessment Phase

Section 11.91 Post-assessment phase—demand.

Section 11.91(a) has been revised to change the reference to "responsible party" to "potentially responsible party."

Section 11.93 Post-assessment phase—Restoration Plan.

Section 11.93(d) has been revised to clarify that damage awards for type A assessments may be combined, so long as the actions are intended to address the same or similar resource injuries as those identified in each of the type A assessments that were the basis of the awards.

Authorship

The primary authors of this final rule are Alison Ling and Linda Burlington, both with the Office of the Solicitor, David Rosenberger, U.S. Fish and Wildlife Service, Willie Taylor, Office of Policy Analysis, all with the Department of the Interior, and Keith Eastin, formerly Deputy Under Secretary with the Department of the Interior.

National Environmental Policy Act, Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Department of the Interior has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) has been prepared.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule provides optional technical procedural guidance for the assessment of damages to natural resources. It does not directly impose any additional cost. In addition, estimates of the potential economic effects of this rule are well below $100 million annually. As the rule applies to Federal and State agencies acting as trustees for natural resources, it is not expected to have a significant effect on a substantial number of small entities. The information collection requirement contained in § 11.41(c) has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0025.

List of Subjects in 43 CFR Part 11

Coastal Zone, Continental shelf, Environmental protection, Fish, Hazardous substances, Incorporation by

reference, Marine resources, National Parks, Natural resources, Oil pollution, Public lands, Recreation areas, Sea shores, Wildlife, Wildlife refuges.

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, and for the reasons set out in this preamble, Title 43, Subtitle A, Part 11 of the Code of Federal Regulations is amended as set forth below.

Dated: February 3, 1987.

Rapl W. Tarr,

Solicitor.

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for 43 CFR Part 11 continues to read as follows:

Authority: 42 U.S.C. 9651(c).

Subpart A—Introduction

2. Section 11.15 is amended by adding a new paragraph (a)(1)(iii), to read as follows:

§ 11.15 Actions against the responsible party for damages.

(a) * * *

(1) * * *

(iii) The determination of damages for injuries to natural resources under this Part shall be based entirely on either paragraph (a)(1)(i) or (a)(1)(ii) of this section. Nothing in this Part precludes the determination of damages for injuries to separate natural resources resulting from a single discharge or release using procedures provided for in either paragraph (a)(1)(i) or (a)(1)(ii) of this section, so long as such determination does not result in double counting of damages.

* * * * *

3. Section 11.18 is amended by adding a new paragraph (a)(4) to read as follows:

§ 11.18 Incorporation by reference.

(a) * * *

(4) Volume I and Appendices A–H of Volume II of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments" (NRDAM/CME technical document), prepared for the U.S. Department of the Interior by Economics Analysis, Inc., Wakefield, RI, and Applied Sciences Associates, Narragansett, RI, DOI 14–01–0001–85–C–20, January 1987, available from CERCLA 301 Project, Room 4354, Department of the Interior, 1801 "C" St. NW, Washington, DC 20240, until June 2, 1987, after which this document will be available through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB87–142485; ph: (703) 487–4650. Reference is made to this publication in §§ 11.33(b)(1) (i), (ii), (vi), and (xi), 11.41(a)(1), (c)(1)(i), and (g)(1)(i) of this Part.

* * * * *

4. A new § 11.19 Information collection is added to Subpart A to read as follows:

§ 11.19 Information collection.

The information collection requirement contained in § 11.41(c) of this Part has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1084–0025. The information is being collected to perform a natural resource damage assessment under Subpart D. The information will be used to complete the Assessment Plan for the Subpart D damage assessment. Response is required to obtain the benefit of the rebuttable presumption.

Subpart B—Preassessment Phase

5. Section 11.24 is amended by adding a new paragraph (c) to read as follows:

§ 11.24 Preassessment screen—information on the site.

* * * * *

(c) *Damages excluded from liability under the CWA.* (1) The authorized official shall determine whether the discharge meets one or more of the exclusions provided in section 311 (a)(2) or (b)(3) of the CWA.

(2) An assessment under this Part shall not be continued for potential injuries from discharges meeting one or more of the CWA exclusions provided for in paragraph (c)(1) of this section.

Subpart C—Assessment Plan Phase

6. Section 11.31 is amended by adding a new paragraph (d) to read as follows:

§ 11.31 Assessment Plan—content.

* * * * *

(d) *Specific requirements for type A assessments.* When a type A natural resource damage assessment is performed, the Assessment Plan shall identify and document all the information specified in Subpart D of this Part.

7. Section 11.33 is amended by adding text to read as follows:

§ 11.33 Assessment Plan—deciding between a type A or type B assessment.

(a) *General.* The authorized official shall select between performing a natural resource damage assessment using either type A assessment procedures provided in Subpart D of this Part or type B assessment procedures provided in Subpart E of this Part.

(b) *Coastal and marine environments.* (1) When a discharge or release occurs in a coastal or marine environment, as those terms are defined in § 11.41(b) of this Part, the authorized official shall determine whether the following conditions apply:

(i) The substance discharged or released is contained in Appendix C of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," U.S. Department of the Interior (incorporated by reference, see § 11.18);

(ii) The estimated quantity and species type of biological resources potentially injured are not expected to differ significantly from the average biomass listed in Appendix B of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," U.S. Department of the Interior (incorporated by reference, see § 11.18), for the season, province, and bottom type in which the discharge or release occurred;

(iii) The discharge or release was of a short duration;

(iv) The discharge or release was minor;

(v) The discharge or release was a single event;

(vi) The estimated injury to biological resources due to the discharge or release is expected to be primarily due to mortality of a species listed in Appendix B of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," U.S. Department of the Interior (incorporated by reference, see § 11.18);

(vii) The discharge or release resulted in the closure of a fishing area, a beach area, or a hunting area;

(viii) The discharge or release occurring outside the coastal or marine environment resulted in the substance entering the coastal or marine environment;

(ix) The use of chemical dispersants or other agents or management actions used in a cleanup of a discharge or release is not estimated to have caused significant injury to natural resources;

(x) The discharge or release occurred at or near the water surface of the coastal or marine environment or in the intertidal area;

(xi) The discharge or release is not expected to cause a significant change in the price of species categories by season, province, or bottom type contained in Appendix F of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," U.S. Department of the Interior (incorporated by reference, see § 11.18); and

(xii) The expected injury to the biological resource due to the discharge or release is not expected to have been primarily due to exposure through the air pathway.

(2) The authorized official must select the type A procedure provided for at § 11.41 of this Part if the discharge or release occurred in, or migrated into, a coastal or marine environment unless:

(i) The potentially responsible party, or, if more than one, parties, jointly submits a written request, and provides documentation for the reasons supporting that request, that a type B assessment, as provided for in Subpart E of this Part, be performed and agrees within a time frame acceptable to the authorized official to advance and bear responsibility for all reasonable assessment costs; or

(ii) The authorized official makes a determination that one or more of the conditions listed in paragraph (b)(1) of this section are not satisfied. This determination of whether a type A procedure is to be performed rather than a type B procedure shall be based upon the considerations of the reasonable cost and cost-effectiveness, as those terms are used in this Part, of performing the type B procedure. This determination shall be documented and included in the Assessment Plan required in § 11.31 of this Part.

(3) If there is a dispute among multiple potentially responsible parties as to whether to request that a type B procedure be performed the determination shall be made by the authorized official.

(4) If, based upon the determination required in paragraph (b)(2) of this section, the authorized official decides to perform a type B procedure provided for in Subpart E of this Part in lieu of a type A procedure provided for in Subpart D of this Part, and the authorized official cannot confirm exposure, the authorized official may not then re-select the type A procedure provided for in Subpart D of this Part.

8. A new Subpart D is added to read as follows:

Subpart D—Type A Assessments

Sec.

Subpart D—Type A Assessments

§ 11.40 Type A assessments—general.

(a) *Purpose.* The purpose of the type A assessment is to provide standard methodologies for conducting simplified natural resource damage assessments.

(b) *Completion of the type A assessment.* After completion of the type A assessment, a Report of Assessment, as described in § 11.90 of this Part, shall be prepared.

(c) *Type A assessment costs.* The reasonable and necessary costs incurred in conducting assessments under this Subpart shall be limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, incident-specific efforts taken in the assessment of damages for natural resources for which the agency is acting as trustee. Such costs shall be supported by appropriate records and documentation, and shall not reflect regular activities performed by the agency in management of the natural resource. Activities undertaken as part of the damage assessment shall be taken in a manner that is cost-effective, as that phrase is used in this Part.

§ 11.41 Coastal and marine environments.

(a) *General.* (1) *Purpose.* The purpose of the procedures contained in this section is to provide a simplified assessment process involving minimal field observation to determine injury, quantify that injury, and determine damages in coastal and marine environments resulting from a discharge or release. The procedures require the use of a computer model referred to as the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). This model is included and explained in the NRDAM/CME technical document entitled "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," U.S. Department of the Interior (incorporated by reference, see § 11.18).

(2) *Steps in the NRDAM/CME.* The NRDAM/CME assessment methodology consists of four phases: § 11.41(c) Coastal and marine environments—Assessment Plan; § 11.41(d) Coastal and marine environments—Injury Determination; § 11.41(e) Coastal and marine environments—Quantification; and § 11.41(f) Coastal and marine environments—Damage Determination.

(3) *Completion of type A assessment.* After application of the NRDAM/CME, a Report of Assessment, as described in § 11.90 of this Part, shall be prepared. The Report of Assessment shall include:

(i) The printed output from the application(s) of the NRDAM/CME;

(ii) The documentation of the determinations made in Subparts B, C, and D of this Part; and

(iii) The documentation of the determinations of incident-specific data inputs required in paragraph (c) of this section.

(b) *Definitions.* As used in this Subpart the phrase:

"Biomass" means the weight of living organisms per unit of prescribed area or volume.

"Bottom type" means one of the sediment types used by the NRDAM/CME.[1] These bottom types are: rock, rocky shore, cobble, cobbled beach, sand, sand beach, mud, mud flat, saltmarsh, seagrass, macroalgal bed (kelp), mangrove swamp, coral reef, mollusk reef, and worm reef.

"CAS number" means the Chemical Abstract Service Registry Number assigned to a hazardous substance by the American Chemical Society, Chemical Abstract Service, or the number assigned to oils by the NRDAM/CME.

"Closure of a beach" means the prohibition of recreational or other public uses in a specified length of a public beach by an appropriate Federal or State agency, due to a discharge or release in a coastal or marine environment.

"Closure of a fishing area" means a prohibition of commercial and recreational fishing in a specified area by an appropriate Federal or State agency, due to a discharge or release in a coastal or marine environment.

"Closure of a hunting area" means the prohibition of recreational hunting for waterfowl in a specified area by an appropriate Federal or State agency, due to the discharge or release in a coastal or marine environment.

"Coastal environment" means the area incorporating: (1) The splash area, which lies above the extreme high water level of spring tide; (2) the upper shore, which lies between the average high tide level and the extreme high water level

[1] These sediment types are derived from the description in "Classification of Wetlands and Deepwater Habitats of the United States," Cowardin, Carter, Golet, and LaRoe, U.S. Department of the Interior/Fish and Wildlife Service, FWS/OBS-79/31, 1979; available from the National Technical Information Service; 5285 Port Royal Road; Springfield, VA 22161; PB 80-168784/LP.

of spring tides; (3) the midshore, which lies between the average low tide level and the average high tide level; (4) the lower shore, which lies between the extreme low water level of spring tides to the average spring tide level; and (5) the sublittoral fringe, which lies below the extreme low water level of spring tides.

"Default parameter(s)" means the value assigned by the NRDAM/CME to any parameter listed in § 11.41(c)(3) of this Part for which an incident-specific value is not supplied.

"Estuarine environment" means deepwater tidal habitats that are usually semi-enclosed by land but have an open, partially obstructed, or sporadic access to the open ocean and in which ocean water is at least occasionally diluted by freshwater runoff from the land. The estuarine environment extends upstream and landward to where ocean-driven salts measure less than 0.5 parts per thousand during the period of average annual low flow; and (1) seaward to an imaginary straight line closing the mouth of a river, bay, or sound; or (2) to the seaward limit of wetland emergents, shrubs, or trees where not included in (1) of this definition. The estuarine environment also includes offshore areas of continuous upwellings of freshwater containing typical estuarine plants and animals.

"Intertidal" means a coastal or marine environment in which the substrate is exposed and flooded by tides, including the associated splash area.

"Marine environment" means the greater of the open ocean extending landward from the seaward limit of the fishery conservation area established by the Magnuson Fishery Conservation and Management Act of 1976 or the Exclusive Economic Zone established by Presidential Proclamation 5030 (48 FR 10605, March 10, 1983) to one of the following: (1) the seaward limit of the coastal environment; or (2) the seaward limit of the estuarine environment. The marine environment does not include offshore areas of continuous upwellings of freshwater containing typical estuarine plants and animals.

"NRDAM/CME" means the Natural Resource Damage Assessment Model for Coastal and Marine Environments, which is an integrated physical fates, biological effects, and economic damages model.

"Predominant bottom type" means the prevailing bottom type in the area of the discharge or release.

"Province" means one of the ten geographical areas used by the NRDAM/CME.[2] These provinces and their respective boundaries are:

(1) Acadian (Northeast: Canadian border to Cape Cod, MA);

(2) Virginian (Mid-Atlantic: Cape Cod, MA, to Cape Hatteras, NC);

(3) Carolinian (South-Atlantic: Cape Hatteras, NC, to Cape Canaveral, FL);

(4) Louisianian (Gulf Coast: Cedar Key, FL, to Aransas, TX);

(5) West Indian (South Florida: Cape Canaveral, FL, to Cedar Key, FL; all Caribbean Islands; and Aransas, TX, to the Mexican border);

(6) Californian (California: Mexican border to Cape Mendocino, CA);

(7) Columbian (Pacific Northwest: Cape Mendocino, CA, to Canadian border);

(8) Fjord (Gulf of Alaska: Canadian border to Aleutian chain);

(9) Arctic (Alaska: Alaska north of the Aleutian chain); and

(10) Pacific Insular (Hawaii and other Pacific islands).

"Pycnocline" means a region in the ocean or in an estuary where a marked change in the density of the water column occurs. The change in density acts as a partial barrier between the upper and lower water columns.

"Species category" means one of the thirteen groupings of biological resources used by the NRDAM/CME to aggregate the biomass of similar species in coastal and marine environments.

"Study area" means the geographical area included in the boundaries required to run the NRDAM/CME. Boundaries are established based on the direction of the mean ocean surface current, called the +X direction; 180 degrees from the direction of the mean ocean surface current, called the −X direction; 90 degrees counterclockwise from the direction of the mean ocean surface current, called the +Y direction; and 270 degrees counterclockwise from the direction of the mean ocean surface current, called the −Y direction.

"Subtidal" means a coastal or marine environment in which the substrate is continuously submerged.

(c) *Coastal and marine environments—Assessment Plan*—(1) *General information.* The following information on the discharge or release shall be documented in the Assessment Plan and used as a data input for the NRDAM/CME.

(i) The chemical CAS number of the substance discharged or released, provided in Appendix C of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," U.S. Department of the Interior (incorporated by reference, see § 11.18).

(ii) The estimated total mass discharged or released stated in metric tons;

(iii) The date of the discharge or release;

(iv) The province in which the discharge or release occurred;

(v) Whether the discharge or release occurred in the marine or estuarine environment;

(vi) Whether the discharge or release occurred in a subtidal or intertidal area;

(vii) The predominant bottom type;

(viii) The current estimate of the implicit price deflator for the Gross National Product, for the quarter during which the discharge or release occurred, as specified in the *Survey of Current Business*, published monthly by the U.S. Department of Commerce/Bureau of Economic Analysis;

(ix) Whether and when a cleanup activity has been conducted and the approximate amount of material removed from the sea surface, the water column, or the sediments, stated in metric tons;

(x) The distance, in kilometers, to the boundary of the study area, including, as appropriate, the presence of a land boundary;

(xi) Whether a fishing area was closed and, if so, the area closed expressed in square meters; the number of days or fractions of days of closure; and the species category or categories for which closure was established;

(xii) Whether a public beach was closed and, if so, the length of beach closed expressed in meters, and the number of days or fractions of days of closure; and

(xiii) Whether a hunting area was closed and, if so, the area closed expressed in square meters and the number of days or fractions of days of closure.

(2) *Required environmental parameters.* The following information on the characteristics of the environment at the approximate time and location of the discharge or release shall be documented in the Assessment Plan and used as a data input for the NRDAM/CME. Efforts expended in the collection of the required environmental parameters of the discharge or release should be consistent with reasonable cost, as used in this Part, of performing

[2] These geographical areas are derived from the descriptions in "Classification of Wetlands and Deepwater Habitats of the United States," Cowardin, Carter, Golet, and LaRoe, U.S. Department of the Interior/Fish and Wildlife Service, FWS/OBS-79/31, 1979; available from the National Technical Information Service; 5285 Port Royal Road; Springfield, VA 22161; PB 80-168784/LP.

the assessment. The authorized official may use historical data, or reference data from appropriate literature, for use as inputs to the NRDAM/CME for the following required environmental parameters:

(i) The mean ocean surface current and the direction of mean flow expressed in meters per second;

(ii) The tidal velocities expressed both in the direction of, and perpendicular to, the mean ocean current expressed in meters per second;

(iii) The wind speed expressed in meters per second;

(iv) The wind direction expressed in degrees measured counterclockwise to the mean ocean current;

(v) The total depth of the water column expressed in meters; and

(vi) The air temperature expressed in degrees Celsius.

(3) *Supplemental environmental parameters.* The following information on the characteristics of the environment at the approximate time and location of the discharge or release shall be documented in the Assessment Plan and used as data input for the NRDAM/CME, if incident-specific information is available. Efforts expended in the collection of environmental parameters of the discharge or release should be consistent with reasonable cost, as used in this Part, of performing the assessment. If no incident-specific information is supplied, the NRDAM/CME will automatically provide, as appropriate, default parameters. The authorized official may use historical data, or reference data from appropriate literature, for use as inputs to the NRDAM/CME for the following parameters:

(i) The presence or absence of a pycnocline:

(ii) If a pycnocline is present, the depth of the upper and lower water columns, both expressed in meters;

(iii) The density of the upper and lower water columns expressed in kilograms per liter;

(iv) The total suspended sediment concentration expressed in milligrams per liter; and

(v) The mean settling velocity of suspended solids expressed in meters per day.

(4) *Time and location.* The time and location of the discharge or release shall be established consistent with 40 CFR 300.63 of the NCP for the discovery and notification of a discharge or release.

(5) *Discharged or released substance.* Discharges of oil shall be identified consistent with 40 CFR Part 110. Released hazardous substances shall be identified consistent with 40 CFR Part 302.

(6) *Results of cleanup actions.* (i) The results of cleanup actions that have been performed as a part of response actions authorized in 40 CFR Part 300 shall be included within the NRDAM/CME procedures.

(ii) Cleanup actions include such actions as the physical removal of the oil or hazardous substance from the coastal or marine environment and the application of chemical agents, dispersants, surface collecting agents, burning agents, or other such agents authorized in 40 CFR Part 300 Subpart H for use on oil discharges. The use of chemical agents, burning agents, or other such agents shall not be considered a discharge or release for the purposes of this Subpart.

(iii) The authorized official may determine the quantity of oil or hazardous substance cleaned up by the response action based on information or data obtained from the OSC.

(7) *Discharges or releases of multiple substances and mixtures.* (i) The NRDAM/CME may be used only in accordance with the requirements of this paragraph in assessing incidents involving the simultaneous discharge or release of two or more oils or hazardous substances, or when a mixture of one or more oils or hazardous substances has been discharged or released in a single incident.

(ii) The authorized official shall select one of the oils or hazardous substances present in the simultaneous discharge or release, or in the mixture. The selected substance shall be identified in the Assessment Plan, and the NRDAM/CME shall be applied only to the quantity of that substance selected that was discharged or released.

(8) *Discharges or releases occurring outside the coastal and marine environments.* (i) If a discharge or release occurs outside the coastal or marine environment, the authorized official shall make a determination of the parameter values for paragraphs (c)(1) through (7) of this section for that portion of the discharge or release that entered the subtidal or intertidal area of the coastal or marine environment if the authorized official chooses to apply the NRDAM/CME to that portion of the discharge or release that entered the coastal or marine environment. These parameter values shall be used as inputs to the NRDAM/CME for a subtidal or intertidal application, as appropriate.

(ii) In applying the NRDAM/CME to discharges or releases that occur outside the coastal or marine environment and enter the coastal or marine environment, the authorized official may use the data required in paragraph (c)(8)(i) of this section and apply that data as if the discharge or release had occurred in the coastal or marine environment.

(d) *Coastal and marine environments—Injury Determination*—(1) *General.* Unless otherwise provided for in this Part, all injury determinations for coastal and marine environments shall be established through the use of the physical fates and biological effects submodels of the NRDAM/CME.

(2) *Pathway of contamination.* (i) The methodology for determining the pathway of contamination is through the application of the physical fates submodel.

(ii) The chemical parameter values of the oil or hazardous substance discharged or released used by the physical fates submodel are provided by the chemical data base contained within the NRDAM/CME.

(iii) The environmental parameters of paragraph (c)(2) of this section shall be provided by the authorized official. The environmental parameters of paragraph (c)(3) of this section shall be provided by either the authorized official or by the default parameters contained in the NRDAM/CME.

(3) *Confirmation of exposure.* When the NRDAM/CME is used no sampling is required to confirm exposure, as described in § 11.34 of this Part. The interaction and results of the physical fates and biological effects submodels establish a presumption of exposure.

(4) *Determination of injury.* The methodology for determining that injury has occurred to natural resources is provided by the biological effects submodel. The biological parameter values of acute toxicity of the oil or hazardous substance discharged or released are provided in the data base contained within the NRDAM/CME.

(e) *Coastal and marine environments—Quantification*—(1) *General.* Unless otherwise provided for in this Part, all quantification of injury for coastal and marine environments shall be established through the use of the biological effects submodel of the NRDAM/CME.

(i) The NRDAM/CME includes a biological data base for each season, province, and bottom type. The results of the Injury Determination are quantified by the biological effects submodel of the NRDAM/CME to provide an estimate of total biomass killed.

(ii) Based upon the results of the physical fates submodel and biological effects portion of the Injury Determination, the authorized official shall make the determinations required

in paragraphs (e)(1)(ii) (A), (B), and (C) of this section, for a subtidal or intertidal discharge or release, as appropriate.

(A) The authorized official shall determine whether any intertidal areas are affected. If any intertidal areas are determined to be affected, the authorized official shall follow the procedures provided in paragraph (e)(3) of this section.

(B) The authorized official shall determine whether any toxic threshold concentrations that migrated across the province boundary are to be included in the assessment. If any inter-provincial migration is to be included, the authorized official shall follow the procedures provided in paragraph (e)(4) of this section.

(C) The authorized official shall determine whether any toxic threshold concentrations that migrated across the boundary of an estuarine/marine environment are to be included in the assessment. If estuarine/marine migration is to be included, the authorized official shall follow the procedures provided in paragraph (e)(5) of this section.

(2) *Study area boundaries.* (i) When the discharge or release migrates outside of the original study area, the authorized official may redefine the study area boundaries, and reapply the NRDAM/CME. The boundaries of the new study area should be redefined such that, to the extent practicable, the new boundaries encompass all the area in which the toxic threshold concentrations have been exceeded in the upper or lower water columns or in which the discharge or release exists as a surface slick, except as specified in paragraphs (e) (3), (4), or (5) of this section.

(ii) The damages determined through multiple applications of the NRDAM/CME as allowed in paragraph (e)(2) of this section are not additive. The damages determined through multiple applications of the NRDAM/CME as described in paragraphs (e) (3), (4), or (5) of this section may be added.

(3) *Intertidal area.* (i) When an initial intertidal application of the NRDAM/CME indicates that a discharge or release has migrated to a subtidal area, the NRDAM/CME may be applied a second time in the subtidal area. The mass of the substance that is specified to have migrated to the subtidal area is the quantity that is discharged or released for the second application.

(ii) When an initial subtidal application of the NRDAM/CME indicates that a discharge or release has migrated ashore, the NRDAM/CME should be applied a second time to the intertidal area. The mass of the substance that is specified to have migrated ashore is the quantity discharged or released for the second application.

(iii) When an initial intertidal application of the NRDAM/CME indicates that a discharge or release has migrated to the subtidal area, and that subsequent application of the NRDAM/CME to that subtidal area pursuant to paragraph (e)(3)(i) of this section indicates remigration of the discharge or release into the intertidal area where the initial application of the NRDAM/CME occurred, the NRDAM/CME may be applied in the intertidal area for a third time. The mass of the substance specified to have migrated ashore is the quantity discharged or released for the third application.

(4) *Inter-province effects.* (i) As appropriate, the boundary of a province shall be included as one or more of the boundaries of the study area.

(ii) When the NRDAM/CME indicates that the oil or hazardous substance has migrated from one province into another province, the NRDAM/CME may be also applied in that second province, provided that when inter-provincial migration occurred, the oil or hazardous substance exceeded toxic threshold concentrations in either the upper or lower water columns or existed as a surface slick at the boundary of the second province, and in the reapplication of the NRDAM/CME the substance has not migrated across the same provencial boundary twice.

(iii) The mass of the substance discharged or released for the second application of the NRDAM/CME shall be calculated as the sum of the percentages of the mass in the surface, upper water column, and lower water column at the time the substance migrated outside the study area multiplied by the mass of the original discharge or release.

(5) *Estuarine/marine.* (i) As appropriate, a boundary between the estuarine and marine environments shall be included as one, or more, of the boundaries of the study area.

(ii) When the NRDAM/CME indicates that the oil or hazardous substance has migrated across a boundary between estuarine and marine environments, the NRDAM/CME may be applied in the second environment, provided that the oil or hazardous substance exceeded toxic threshold concentrations in either the upper or lower water column at the boundary or existed as a surface slick at the boundary between the estuarine and marine environments. The mass of the substance discharged or released for the second application shall be calculated in accordance with paragraph (e)(4)(iii) of this section.

(6) In implementing paragraphs (e) (3), (4), and (5) of this section, the authorized official shall add the resulting damages calculated by application of the NRDAM/CME for no more than a total of:

(i) Two applications of the NRDAM/CME when the discharge or release is contained wholly within one province and occurs under the conditions listed in paragraphs (e)(3)(i), (e)(3)(ii), or (e)(5) of this section; or

(ii) Three applications of the NRDAM/CME when the discharge or release is contained wholly within one province and occurs under the conditions listed in paragraph (e)(3)(iii) of this section.

(f) *Coastal and marine environments—Damage Determination*—(1) *General.* Unless otherwise provided for in this Part, all damage determinations for coastal and marine environments shall be established through the use of the economic damages submodel of the NRDAM/CME.

(i) Damages, as determined by the NRDAM/CME, are the average diminution in the in situ use values due to the discharge of oil or release of a hazardous substance.

(ii) Damages are calculated for short-term lethal effects on lower trophic biota; direct and indirect lethal effects on fur seals, waterfowl, shorebirds, and seabirds; direct and indirect lethal effects on fish and shellfish; the reduction in catch from the closure of a fishing area; the reduction in harvest from the closure of a hunting area; and the direct loss of use of a public beach due to closure.

(2) *Estimating damages for fishing area closures.* (i) To determine damages for the closure of a fishing area the authorized official shall specify, as a data input for the NRDAM/CME, the species category or categories for which closure is applicable, the amount of area closed to fishing, and the length of time the area is closed to fishing due to the discharge or release.

(ii) The information described in paragraph (f)(2)(i) of this section may be added as a data input to the NRDAM/CME only when sampling or analysis supporting the need for the closure are documented in the Assessment Plan. Such documentation shall demonstrate that the closure resulted from the discharge or release being investigated.

(3) *Estimating damages for hunting area closures.* (i) To determine damages for the closure of a hunting area the authorized official shall specify, as a data input for the NRDAM/CME, the

amount of area closed to hunting and the length of time the area is closed to hunting due to the discharge or release.

(ii) The information described in paragraph (f)(3)(i) of this section may be added as a data input to the NRDAM/CME only when sampling or analysis supporting the need for the closure are documented in the Assessment Plan. Such documentation shall demonstrate that the closure resulted from the discharge or release being investigated.

(4) *Estimating damages for beach closure.* (i) To determine damages for loss of beach use the authorized official shall specify, as a data input for the NRDAM/CME, the length of the area closed, the type of beach closed, and the amount of time this area is closed due to the discharge or release.

(ii) The information described in paragraph (f)(4)(i) of this section may be added as a data input to the NRDAM/CME only when the need for the closure and the extent of the area to be closed has been documented in the Assessment Plan. Such documentation shall demonstrate that the closure resulted from the discharge or release being investigated.

(5) *Estimating other damages.* Only those damages determined by the NRDAM/CME may be claimed as damages in a type A damage assessment for coastal and marine environments.

(g) *Coastal and marine environments—NRDAM/CME availability, security, and verification—*(1) *General.* (i) The NRDAM/CME that may be used for assessment of damages to coastal and marine environments under this Subpart is version 1.1 of "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," U.S. Department of the Interior (incorporated by reference, see § 11.18).

(ii) No alterations, substitutions, additions, or deletions may be made to the logic structure, to any of the mathematical equations, including their numerical coefficients and rate functions, or to any other program element of the NRDAM/CME.

(iii) No alterations, substitutions, additions, or deletions may be made to any of the data bases that accompany and are interactive with the NRDAM/CME.

(2) *Official Reference Documentation.* (i) The Department of the Interior shall maintain and hold secure the Official Reference Documentation of the NRDAM/CME. The Official Reference Documentation shall include a printed copy of the NRDAM/CME computer program, written documentation of the NRDAM/CME, printed copies of the data bases, and the four computer disks, which shall be referenced as:

(A) Disk #1–DATA;

(B) Disk #2–PHYS;

(C) Disk #3–BIO; and

(D) Disk #4–ECON.

(ii) The Department of the Interior shall make available upon request copies of such information as may be contained in the Official Reference Documentation.

(3) *Model verification.* (i) Where verification of the NRDAM/CME is needed, the potentially responsible party or the authorized official may obtain such information as may be needed from the Official Reference Documentation.

(ii) Verification may be accomplished by one of the following:

(A) Comparison of any given application of the model output from the copy of the NRDAM/CME and model output from the verified copy, when the same data input parameters are used. The outputs must be identical.

(B) Comparison of the computer program and data base files on the verified disks and the disks used, using a file comparison program. All program and data base input files must be identical.

(iii) The Department of the Interior may charge an appropriate fee for providing such verification, as provided for in 31 U.S.C. 9701.

Subpart F—Post-Assessment Phase

9. Section 11.91 is amended by revising paragraph (a) to read as follows:

§ 11.91 Post-assessment phase—demand.

(a) *Requirement and content.* At the conclusion of the assessment the authorized official shall present to the potentially responsible party a demand in writing for a sum certain, representing the damages determined in accordance with the requirements and guidance of § 11.40 or of § 11.80 and including the reasonable cost of the assessment, delivered in such a manner as will establish the date of receipt. The demand shall adequately identify the Federal or State agency asserting the claim, the general location and description of the injured resource, identification of the type of discharge or release determined to have resulted in the injuries, and the damages sought from that party.

* * * * *

10. Section § 11.93 is amended by adding a new paragraph (d) to read as follows:

§ 11.93 Post-assessment phase—Restoration Plan.

* * * * *

(d) If the measure of damages was determined in accordance with Subpart D, the restoration plan may describe actions to be taken that are to be financed from more than one damage award, so long as the actions are intended to address the same or similar resource injuries as those identified in each of the Subpart D assessment procedures that were the basis of the awards.

[FR Doc. 87–2603 Filed 3–19–87; 8:45 am]

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Friday
March 20, 1987

Part V

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for the Surface Waters of the Commonwealth of Kentucky; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-3114-1]

Water Quality Standards for the Surface Waters of the Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 24, 1985, EPA proposed chloride criteria applicable to the Commonwealth of Kentucky because the criterion adopted by the Commonwealth was enjoined from enforcement by the Johnson County, Kentucky Circuit Court. Although the court injunction has been dissolved, EPA has determined that the exception process outlined in the Consent Decree is inappropriate and renders the Kentucky's chloride criteria ineffective. Therefore, EPA is promulgating Federal chloride criteria that will protect warmwater aquatic life in the Commonwealth.

DATE: This rule becomes effective on April 20, 1987.

FOR FURTHER INFORMATION CONTACT: Phil Vorsatz, Water Quality Section, Water Management Division, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404/347-2126).

SUPPLEMENTARY INFORMATION:

A. Legal Authority

Section 303(c)(4)(B) [33 U.S.C. 1313(c)(4)(B)] of the Clean Water Act (the Act) authorizes EPA to promulgate water quality standards in any case where such standard is determined necessary to meet the requirements of the Act. The Act defines water quality standards to consist of designated uses and ambient water quality criteria to protect those uses.

B. Background

On April 8, 1985, the Kentucky Natural Resources and Environmental Protection Cabinet (the Cabinet) adopted water quality criteria for chloride to protect the "warmwater aquatic life" designated use in the Commonwealth. The criteria were approved by EPA on July 10, 1985.

Following adoption of the chloride criteria, the Johnson Circuit Court issued an injunction prohibiting enforcement of the criteria. Accordingly, on December 24, 1985 (50 FR 52540), EPA proposed a rule establishing chloride criteria to replace the enjoined criteria.

As part of the rulemaking process, EPA held two public hearings in Kentucky on February 19–20, 1986, to receive comments on the proposed rule. Comments received during the public comment period and EPA's responses are presented later in this preamble.

Subsequent to EPA's proposal and associated public hearings, on March 17, 1986, the Kentucky Cabinet and the oil and gas interests entered a Consent Decree into the Johnson Circuit Court to resolve the issues that were the subject of the complaint and resultant court injunction. The Circuit Court approved the Consent Decree and set aside the injunction against Kentucky's water quality standards. The Consent Decree provides that the Court may enforce the Decree if any party fails to comply with the terms of the Decree.

The Consent Decree provides that the water quality regulation at 401 KAR 5:031, i.e., the chloride criterion, shall be effective immediately. However, the Decree also provides that exceptions to water quality criteria may be granted where application of such criteria would result in substantial and widespread economic and social impacts, as determined by the guidelines developed by the parties and appended to the Consent Decree. Such a procedure is analogous to the "variance" procedure discussed in 40 CFR 131.13 and in the Preamble to EPA's water quality standards regulation (48 FR 51400, November 8, 1983). Under EPA's regulations, a variance may be granted only when a demonstration is made sufficient to justify a use downgrade.

EPA has carefully evaluated the provisions of the Consent Decree and associated appendix, compared it with the requirements of the applicable regulations, and has determined that the economic evaluation technique contained therein is inappropriate in its present form. In particular, the "Producer Impact" and "Community Impact" tests are seriously flawed and should not be used to evaluate exceptions to water quality standards. A primary measure for determining "Producer Impact" is whether compliance with the standards results in a return on investment which is less than the current rate of return from the purchase of a U.S. Treasury Bill. However, this evaluation technique is an inappropriate benchmark since the producers are not required to provide any documentation to indicate that they have ever received such a rate of return prior to any investment in water quality based pollution control technologies.

Another important economic aspect that was not considered in the Consent Decree is the issue of tax incentives. The relationship between oil and stripper production and tax implications requires in-depth evaluation and should provide relevant information to determine the real impacts of pollution control investments on the oil stripper well industry and communities in the Commonwealth of Kentucky.

The exception process outlined in the Consent Decree does not meet the requirements for an EPA-approved variance and could render the State-adopted chloride criterion virtually ineffective for controlling a problem pollutant in the Commonwealth. EPA, therefore, has determined that it is necessary to undertake rulemaking proceedings to correct the deficiency in Kentucky's water quality standards.

C. Statutory Basis and Purpose

Section 303(c) of the Act provides that water quality standards consist of the designated uses of a waterbody and the water quality criteria which will support those uses. Section 303(c) requires that such standards protect public health and welfare, enhance the quality of the water and serve the purposes of the Act. The ultimate purpose of water quality standards, as with other sections of the Act, is to achieve the national goal, wherever attainable, of water quality which provides for the protection and propagation of fish, shellfish and wildlife, and provides for recreation in and on the water.

EPA's water quality standards regulation, at 40 CFR Part 131 (48 FR 51406, November 8, 1983), which implements section 303(c) of the Act, requires that states review water quality data and information on discharges to identify specific waters where pollutants may be adversely affecting water quality or attainment of the designated uses or where the levels of these pollutants are at a level to warrant concern and that States adopt criteria for such pollutants to protect the designated uses.

Chloride has been determined to be a significant problem pollutant in the Commonwealth and the Cabinet adopted a numerical criterion to control this pollutant. However, the court injunction prohibiting enforcement of the criterion effectively repealed the chloride criterion adopted by the Cabinet. EPA has further determined that the Consent Decree lifting the court injunction does not meet EPA's requirements for a variance and could render the Commonwealth's chloride criteria ineffective.

Under section 303(c)(4)(B) of the Act, EPA shall promulgate any revised or new standard where such standard is

necessary to meet the requirements of the Act. Since the Consent Decree has undercut the ability of Kentucky's chloride criterion to control this significant toxic pollutant, EPA is herewith promulgating Federal chloride criteria for Kentucky. These Federal criteria may be relaxed only by EPA in accordance with its regulations, not by the State through the Consent Decree process.

D. EPA's Final Criteria

EPA's final rule promulgated today is the same as the rule proposed by EPA on December 24, 1985. This rule establishes an allowable instream concentration for chloride of 600 mg/1 as a 30-day average, with a maximum concentration not to exceed 1,200 mg/1 at any time, to protect warmwater aquatic life in Kentucky. These criteria are designed to protect aquatic life in the Commonwealth from both acute and chronic toxicity.

As discussed in detail in EPA's proposed rulemaking notice, these criteria are consistent with the chloride criteria developed by the University of Kentucky following a comprehensive study which considered both laboratory and field data. The study concluded that these criteria were protective of warmwater aquatic life in significant stream systems in Kentucky.

EPA does not endorse establishment of these criteria on a national basis. These criteria are being promulgated at the proposed levels since there are currently no published national criteria for chloride under section 304(a) of the Act for aquatic life and the criteria contained herein represent the best scientific information available for waters in Kentucky. Development of water quality criteria, however, is an ongoing process and criteria are re-evaluated and revised as new scientific information becomes available.

E. Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Administrator is required to conduct a regulatory flexibility analysis describing the impact of EPA's final rule on small entities. A summary of this analysis is herewith provided.

At the outset, we noted that section 303(c) of the Act requires that water quality standards, which consist of designated uses for the waters and criteria to protect the uses, be established for all waters. EPA's regulations implementing section 303(c) provide that the criteria must include sufficient parameter coverage to protect the designated uses of the water-body.

Because there is a documented chloride problem in Kentucky which can interfere with the uses designated by the Commonwealth, the standards for Kentucky waters must include chloride criteria which protect the designated uses. Since the chloride criteria adopted by Kentucky have been determined to no longer meet the requirements of the Act, EPA must promulgate criteria in accordance with section 303(c)(4)(B) of the Act.

Once a particular designated use is established, criteria must be determined based on what is needed to protect the use. Accordingly, in this context, the Clean Water Act does not allow selection of criteria to turn on the impact on small entities. Nonetheless, for general informational purposes, we have analyzed the possible impact of today's promulgation on small entities. Such information may be considered in the content of an application to EPA for a variance, 40 CFR 131.13.

The chloride criteria promulgated herein will potentially affect anyone who discharges chloride into waters of the Commonwealth of Kentucky, since anyone discharging into such waters must comply with a NPDES or section 404 permit which must assure compliance with the chloride water quality criteria. The primary group that potentially will be affected are producers of oil and gas. Produced water (brine) which is generally high in chlorides accompanies production of oil and gas. However, currently all gas producers and oil producers, with the exception of those producing from stripper wells, are subject to a technology-based no-discharge regulation (40 CFR 435.32). Therefore, the main producers potentially affected by these water quality standards are those producing oil from stripper wells. (A stripper well is defined as one that produces less than 10 barrels of oil per day.)

According to Kentucky's data, there are approximately 15,500 producing oil wells in Kentucky, many of which are classified as "stripper" wells. It is these currently unregulated stripper well discharges that have no treatment controls in place that Kentucky was attempting to control through its adoption of criteria for chloride and that would be most directly affected by the Federal rule.

Of 1,920 oil producers, approximately 1,684 are considered to be small operators, i.e., owning less than 10 wells each. It is estimated that these producers, to the extent they own stripper wells, would be the ones most impacted by this rulemaking. Producers on large streams with sufficient assimilative capacity could perhaps meet the instream criteria for chloride with a modest investment whereas dischargers to small, low-flow streams probably would require disposal by reinjection methods. Transportation to a centralized reinjection facility would be the most cost-effective means of disposal for operators on small low-flow streams. Some operators may not be able to absorb the cost of compliance with the chloride criteria and remain viable producers, resulting in possible well closures.

In the proposed rulemaking notice, EPA requested comments on the economic impact of the proposed rule. Several commenters at the hearings claimed that compliance with the criteria would result in economic hardship, however, no data or information were submitted to support these assertions. Therefore, it was not possible to determine the potential economic impact associated with this rulemaking based upon the comments received during the hearing process.

Insufficient data are available to document the number of entities that would be adversely affected by the rule and the number of well closures anticipated as a result of the potential cost of investment in disposal methods to achieve compliance with the criteria. Furthermore, no information was received to predict the economic impact of well closures on operator earnings and county and state tax revenues.

The high chloride levels in many of Kentucky's waters are directly related to the currently unregulated stripper well (brine) discharges. To allow blanket exceptions for these small entities would defeat the purpose of water quality standards and would be inconsistent with the provisions of the Act. Furthermore, the fact that a producer may own one well or less than 10 wells, even assuming they are all stripper wells, does not necessarily mean it is a small entity. Many of these wells would not be expected to provide the sole or primary source of income for the producers.

In order to control this pollutant and protect the designated uses of the receiving waters, discharges of brine to surface waters must be required to meet the chloride criteria promulgated herein or must be prohibited.

F. Summary of Public Comments

1. *Comment:* Several commenters expressed concern that imposition of a chloride criterion on oil producers would result in severe economic hardship, including loss of jobs and State/County tax revenues.

Response. EPA's Water Quality Standards Regulation requires that water quality criteria must be adopted for all pollutants which may be adversely impacting the designated uses of a water-body. The final rule promulgated herein establishes numerical criteria for chloride to protect the aquatic life use which Kentucky has designated for certain of its waters. Chloride has been identified by the Cabinet and recognized by EPA as a significant pollutant affecting many Kentucky waters. Water quality criteria are established based upon scientific consideration of acceptable pollutant levels which will allow a use to be attained. Economic impact data do not play a part in the establishment of numerical criteria.

Economic factors may be considered when assessing the propriety of a designated use. The provisions governing modification or removal of a designated use are contained in EPA's Water Quality Standards Regulation. However, the designated uses of Kentucky's water are not the subject of this rulemaking. (Indeed, under section 510 of the Act, EPA may not weaken a State's designated use.)

Under the Regulatory Flexibility Act, the economic impact of a rule on small entities must be considered. A summary of EPA's analysis is included under Part E of this rulemaking.

2. *Comment:* One commenter inquired as to whether further studies of the streams in Kentucky will be conducted before EPA promulgates chloride criteria. The commenter also questioned whether EPA will give assistance to small oil producers to comply with the chloride criteria (i.e., development of treatment methodology, funding of treatment, additional time to comply, etc.) and whether other industrial/commercial concerns will have to comply with the Clean Water Act.

Response: Since it would be impossible to study every stream segment in the Commonwealth, EPA has determined that the study conducted by the University of Kentucky on significant stream systems in the Commonwealth represents the best information to date on the effects of chloride on warmwater aquatic life in the Commonwealth. If future studies indicate that the chloride criteria promulgated herein are not appropriate for many Kentucky waters, EPA will modify their rulemaking as necessary.

Compliance with the Clean Water Act and the chloride criteria promulgated herein is mandated for all dischargers. EPA will provide whatever assistance it can to oil producers to identify state-of-the-art methodologies for treatment of brine and will work with the oil producers through the NPDES process to establish compliance schedules to allow the discharger a reasonable amount of time to implement the necessary controls to meet the criteria.

3. *Comment:* Several commenters supported EPA's proposal and strongly objected to acceptance of the exemption mechanism contained in the Consent Decree.

Response: As discussed in Part A of this rule. EPA agrees that the economic exemption provisions contained in the Consent Decree are flawed and can render the Commonwealth's chloride criterion ineffective.

4. *Comment:* Some commenters supported EPA's rule but were concerned that the rule may not be adequately protective of aquatic plants and sensitive invertebrates and that more research needs to be done to determine the health effects associated with chloride, particularly as it may impact public water supplies.

Response: As discussed in Part D of this rule, the chloride criteria promulgated herein represent the best information available to date on the effects of chloride on warmwater aquatic organisms in waters of the Commonwealth. However, as new information becomes available, EPA may reevaluate these criteria and modify them accordingly. At present, EPA has no published national chloride criteria for aquatic life. However, a criteria document is currently under development which will consider the impacts of chloride on all aquatic organisms, including aquatic plants. The effects of pollutants on public health and welfare will also be considered by EPA in the development of national criteria. EPA currently recommends that chlorides in public drinking water supplies not exceed 250 mg/1 to protect public welfare (see 40 CFR 143.3). The Commonwealth's Public Water Supply criterion is consistent with EPA's recommendation and is not affected by today's rulemaking.

5. *Comment:* One commenter criticized the University of Kentucky study, pointing to the fact that all brines are not the same and therefore criteria should not be relaxed based on field data. The commenter suggested that EPA thoroughly review the University of Kentucky data and consider additional field studies.

Response: See response under Comment #4. In development of national criteria, EPA primarily considers laboratory data since field data generally represent too much variability which may skew the data results to allow concentrations of a constituent that may not provide adequate protection in many waterbodies. If EPA's national criteria indicate that the criteria promulgated herein do not provide adequate protection for many waters in Kentucky, this rule will be modified as appropriate.

6. *Comment:* One commenter at the public hearing claimed that an independent review of the University of Kentucky study indicated that the field biological part of the study was poorly designed, implemented, recorded and interpreted. The commenter agreed to provide written comments explaining the concerns.

Response: EPA's technical staff has reviewed the University of Kentucky study and believes that the study was adequately designed and implemented and represents the best information presently available on stream systems in Kentucky. The commenter's written documentation addressing specific concerns and supporting the commenter's claims were never received so EPA is unable to provide a more detailed response.

G. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory and impact analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This regulation is not a major rule because it is projected that the annualized cost is significantly less than $100 million and it meets none of the other criteria specified in section 1(b) of the Executive Order. This rule was reviewed by the Office of Management and Budget.

H. Availability of the Record

The entire administrative record concerning the Kentucky Water Quality Standards discussed in this preamble is available for public inspection and copying at the EPA, Region IV Office, Water Quality Section, 345 Courtland Street, NE., Atlanta, Georgia 30365. The applicable Kentucky regulation and the Consent Decree entered in the Johnson Circuit Court Actions are also available for public inspection and copying from the Criteria and Standards Division, OWRS, Room 2818, 401 M Street, SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 131

Water pollution control, Intergovernmental relations, Administrative practices and procedures, Reporting and recordkeeping.

Dated: March 11, 1987.

Lee M. Thomas,

Administrator.

PART 131—[AMENDED]

1. The authority citation for Part 131 continues to read as follows:

Authority: Clean Water Act, P.L. 92–500, as amended; 33 U.S.C. 1251 *et seq.*

2. Part 131 is amended by adding § 131.34 to read as follows:

§ 131.34 Kentucky.

In 401 KAR 5:031, section 4(i), Table 1, entitled, "Warmwater Aquatic Habitat Criteria," the concentration for "chloride" is superseded. The applicable concentration for "chloride" shall be as follows: 600 mg/1 as a 30-day average, not to exceed a maximum of 1,200 mg/1 at any time.

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LIST OF PUBLIC LAWS

Last List March 17, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form

(referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 153/Pub. L. 100-11

To provide for timely issuance of grants and loans by the Environmental Protection Agency under the Asbestos School Hazard Abatement Act of 1985 to ensure that eligible local educational agencies can complete asbestos abatement work in school buildings during the 1987 summer school recess. (Mar. 17, 1987; 101 Stat. 102; 1 page) Price: $1.00

S. 83/Pub. L. 100-12

National Appliance Energy Conservation Act of 1987. (Mar. 17, 1987; 101 Stat. 103; 24 pages) Price: $1.00